PETITION FOR A WRIT OF CERTIORARI

749458
Supr. Ct.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 378

ROY GRANT, JR., DOING BUSINESS AS NO SLEET WINDSHIELD HEATER COMPANY,

Plaintiff-Appellant,
Petitioner,

vs.

GENERAL MOTORS CORPORATION, A FOREIGN CORPORATION, GENERAL MOTORS SALES CORPORATION, A DISSOLVED FOREIGN CORPORATION, WHEELER, WHEELER AND WHEELER, A FIRM, WARREN G. WHEELER AND S. L. WHEELER, LECHER, MICHAEL, SPOHN AND BEST, A FIRM, JOHN W. MICHAEL AND MILES HENNINGER, MORSELL AND MORSELL, A FIRM, AND ARTHUR L. MORSELL, ROBB AND ROBB, A FIRM, AND J. F. ROBB, AND ELWIN A. ANDRUS,

Defendants,

GENERAL MOTORS CORPORATION, A FOREIGN CORPORATION, GENERAL MOTORS SALES CORPORATION, A DISSOLVED FOREIGN CORPORATION,

Defendants-Appellees,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

ROY GRANT, JR.,
Post Office Box 1695,
Milwaukee 1, Wisconsin,
Petitioner.

THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

SUBJECT INDEX.

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To the Honorable,
The Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner Roy Grant, Jr., respectfully prays for a

writ of certiorari herein to review a certain final decision of the Circuit Court of Appeals for the Seventh Circuit, being the Appellate Court of the United States District Court for the Eastern District of Wisconsin, in the above entitled cause and your petitioner represents that the opinion and decision of said Appellate Court were reduced and filed on March 12, 1946 (Tr. 382; or, App. "D" herein); that on June 11, 1946 the time for filing a petition for certiorari in this cause was extended to and including August 11, 1946 by order of the Honorable Wiley Rutledge, Associate Justice of this Supreme Court (Tr. 430; or, App. "E" herein).

2.

SUMMARY STATEMENT OF MATTERS INVOLVED.

Your petitioner, in respectfully petitioning this Supreme Court of the United States, the highest court of last resort, to duly exercise the discretion and supervisory powers reposed in this Court, further represents that he feels very, very deep convictions in connection with inwardly awareness of fault with respect to,—

(a) the misfeasance, or in another character, the undue conjecture or speculation in the conscience of the courts before which this cause has been; to all of which, in the procedural stage of this action the misfeasance is illegally harmful to this litigant;

(b) to the unprincipled malfeasance and/or lack of adherence to fidelity in the interests of truth and justice by certain officers of the Court adversely interested in this cause; and

(c) to the unwarranted vexatious summary opinions and/or judicial acts of dismissal premised on the complete record.

The complete record readily exposes, to clear mental view, grossly aggravating-assaults, of unfairness and injustice, of intemperate, scandalous, hot-fanatical, professional and partisan allegations, of the Corporate defendants' attorneys and another, the trial judge, (Tr. 53, 54, 56, 57, 59, 60, 61, 65, 66, 144, 149, 152, 153, 173, 227, 230), in regard to the adversely alleged unprofessional pleadings of your petitioner all of which reflects strong unethical prejudice against this litigant and moves, serenely with lack of concern, against the integrity and public reputation of judicial proceedings, as would reasonably appeal to

this Court's discretion and supervisory powers and instantly alert this Court to correct the clear archaic judicial procedural abuses, designedly substituted for Due Process of Law and Equal Protection of the Law for the sinister purpose, of abridging the substantive law of inalienable Civil rights and transcending the proper administration of justice.

The printed record on file in this court has been compiled, and printed at the instigation of your petitioner and a certification of fairness of the printed record, has been made by the petitioner; and the certification offered for due filing by the Honorable Clerk of this court (Tr. .....).

Otherwise, since February 14, 1946, the typewritten record remains unprinted although either the clerk of the Appellate Court or the Honorable Clerk of this court, have been fully provided with the funds estimated for printing and other probable expenses.

For determination by this Court with respect to Law of the Case, it seems proper and necessary to set out briefly, very briefly, several, not all, of the pertinent parts of the propositions, and arguments offered for consideration before the trial court in connection with the issues pleaded.

On May 12, 1945, your petitioner filed his original complaint in the Office of the Clerk of the Trial Court. The complaint displays the averments of the claims in numbered paragraphs, the contents of each of which are limited as far as practicable to a statement of a single set of circumstances.

The corporate defendants, General Motors Corporation and its wholly owned sales subsidiary are charged with infringement and violation of the Anti-Trust Laws and

Clayton Act all to the damage of the complainant. Other material averments of the proximate cause of other damage to the plaintiff to which the complainant intended to offer evidence are clearly set out.

Other defendants, certain law firms and/or individual partners or persons thereof are charged, in clear language, if given a reasonable interpretation, with malfeasance, moral turpitude, gross negligence and dereliction and breaches of duties, misleading the complainant and other unfairness involving violations of attorney's oath, and with misrepresentations regarding matters of law by attorneys professing knowledge thereof, thereby obtaining unconscionable advantage over the complainant not in a position to become informed, all to the advantage of the corporate defendants allegedly infringing on the Patent rights of the complainant, and to the disadvantage and denial of Civil Rights of the plaintiff, and a conspiracy to interfere with plaintiff's civil rights.

For example, but not all,—

Re defendant S. L. Wheeler of the firm Wheeler, Wheeler and Wheeler,—

> After time had run out on every other subterfuge employed to delay or deny adjudication of the plaintiff's patent, S. L. Wheeler resorted to contemptuous remarks with respect to the President of the United States and with respect to the Honorable Justices of the Supreme Court of the United States, and other Judicial appointees of the President.

Page 17 of the Transcript of Proceedings, dated July 2, 1945 contains the following remarks taken from the office letter of defendant S. L. Wheeler,—

> "1. The New Deal administration has persistently ignored the value of patents to the small manufacturer and the New Deal judges have taken the lead in causing courts to upset patents which were duly granted

by the Patent Office and would otherwise be held valid but for the extent to which the Supreme Court has set a new standard of invention."

The Court: Who signed that letter?

Mr. Grant: Lawrence Wheeler. . . .

Page 18, Transcript, same.

He (Wheeler) continues on: "You have some chance of sustaining the Birely patent in court but, in my judgment, your chance is quite remote in view of the present attitude of the Roosevelt appointees on the Supreme Bench."

Page 19, same.

. . . (Wheeler) "The fact that a patent is about the only weapon with which a small manufacturer can contest a financial monopoly is one which has persistently been overlooked by the present administration. Whether they are sincere or whether they won't see this because they do not want to, I do not know."

. . . The Court: What is the date of the letter of Mr. Wheeler criticizing Federal—

Page 20.

Mr. Grant: March 7, 1944. I was quite surprised because when I looked at his motion he said that this was his favorite court that he would appear before. I wasn't aware of that until I read that statement in his motion. I can assure you that what was printed is a lot less than what I have heard in conversation.

Re defendant Arthur L. Morsell of the firm Morsell and Morsell,—

The imperfect consideration is set out e.g.,

". . . to warrant us in handling this case on 'any' basis" (Tr. 35).

Re defendant, Elwin A. Andrus,—

Excerpt From Andrus Affidavit.

"It appeared that in view of the running of the Statute of Limitations, the amount of recovery possible was being reduced with each day passed and

plaintiff expressed the desire to bring immediate suit against all of the major automobile companies for infringement" (Tr. 42).

Re defendants, Michael and Henninger of the firm Lecher, Michael, Spohn & Best,—

A reading of the record of plaintiff's affidavit (Tr. 69, 70, 71), plaintiff's memorandum (75, 76, 77, 78, 79, 80, 81) and reading the certified transcript of proceedings, dated July 2, 1945 on file in this Court at pages 45, the last paragraph continuing to the top of page 46, and the last paragraph of page 51 and page 52 the words are fully descriptive of the malfeasance and violation of Civil Rights foisted by the attorney defendants upon the plaintiff.

The corruption of ideals, of professional ethics, the vile disgracing, defaming, scandalization of the President of the United States, of the Justices of the Supreme Court of the United States, the discriminating defamation of the dignity of the Supreme Court, and of other lesser judicial appointees of the President, by otherwise thought esteemed reputable officers of the Court, exiles many other disparaging remarks of record into much lessor importance and convincingly establishes the "Undue Influence" impressed on a distressed client to which, certain few faceless, unprincipled, predatory officers of the Court would materialistically descend with gratification from presumptive rank and dignity under a confidential fiduciary relation, thus reposed in them, to give aid and comfort to the Corporate defendants to the unfair advantage of the client.

Specific stress was placed on undue influence in plaintiff's argument before the trial court and at page 45 of the transcript of proceedings, dated July 2, 1945 the following paragraph appears. The paragraph carries over to the first 4 lines of page 46, and is set out here verbatim:—

"Now, there are other implications I understand

> unless you know what to put in a Complaint. There are many rights that should be maintained if they are properly pleaded. It was quite an escape. What hand reaches out and controls these attorneys and what is in this hand that reaches out I don't know, but I can't understand. Here I am a local citizen, I am a white person, I am 21; I know no reason why I can't appear before your court. It is a duty of attorneys to take and assist a layman. They have cited no reason why the object to me, and yet every conceivable thing from abusing the courts and delaying Grant has been put into this picture to let a day go by, as Mr. Andrus so well pleaded in his affidavit, that laches were recognized; that time, every day that went by would minimize the recovery, and that is my point. Chopping off these days. It took me five months, your honor, to draft that Bill of Complaint."

Further, it is the severe conviction and thus strong contention of your petitioner that the trial judge lent his judicial dictum to biased undue influence in the conduct of the hearings and to his fellow fraternity travelers of the Milwaukee Patent Law Association with the pronounced adjudication expressed by writing over his signature, to wit,—

> "However, as stated heretofore, the plaintiff is a layman and should not be held to the same fine choice of language that one skilled in the law would use" (Tr. 173).

The declared fine choice of language represented by words used by the defendant attorneys would appear to be superiorily endorsed by the court and supported only by the true meaning of any of the words used by the defendant attorneys to convey ideas. Good faith and common sense are not to confound, ruin or corrupt the words of the defendant attorneys.

However, some reasonable normal interpretation should

be placed on the following excerpts taken from the plaintiff's affidavit re defendant Andrus:—

"The discussion also included a review of repressive conditions experienced by plaintiff in the conduct of his business with respect to unfair trade practices prohibited under the Anti Trust Laws and Clayton Act of the United States Code and said practices maintained by defendant General Motors Corporation and General Motors Sales Corporation. Conclusions reached with respect to said unfair trade practices were favorable and the opinion so expressed by defendant, with the defendant further advising plaintiff proof could be further established by using as a witness a 'broken-down' country dealer who had an ax to grind."

"At approximately 10:30 P. M. defendant advised plaintiff he was satisfied a good basis for an infringement and unfair competition suit existed and defendant would go to his office the following morning, Saturday, January 27, 1945 and reply in detail to the conditions plaintiff presented."

"From approximately 10:30 P. M. to a few minutes after 12:00 midnight defendant appeared to be in no evident mood to leave and the time was spent with the defendant recalling many details of his experiences and impressing upon the plaintiff that even though a patent was valid justice many times was hollow and a mockery as procedural difficulties under the Rules of Civil Procedure were 'skeletons in the closet' defeating the real issue of patent infringement and therein, only supposedly, the real course of action was before the court."

"When plaintiff replied, that to the layman the viewpoints expressed were interpreted as a reproach to law, to the honor of the court and to the Judges and a mockery of Justice, a further comment suggested 'such skeletons' have caused more than one inventor of prime inventions to be denied his legal rights to monies which the invention produced and that defendant knew

from past experiences in patent cases of similar moment, large corporate wealth did spend,

(a) over $10,000 to defeat the true cause of action by interposing procedure difficulties;

(b) and in excess of $250,000.00, a quarter of a million dollars, to defend suits of infringement of prime inventions which they did not own or could not destroy or overcome with either the skill of their legal counsel or great research laboratories." (Tr. 85, 86.)

All defendant attorneys (the Robbs excepted, who were not served by the U. S. Marshal) filed Motions to Dismiss. The corporate defendants also filed a Motion to Dismiss.

It would seem the rule is perfectly well settled that a motion to dismiss should be denied unless under no possible proof could likelihood of the plaintiff's "verified" allegations of the complaint be shown.

It would also seem the rule is perfectly well settled that the submission of anything but a real controversy to the court is a judicial fraud.

Now, treating with the express verified declarations of the complaint it seems highly proper in the light of the two rules hereinbefore preceding to examine the fine choice of language of the defendant attorneys in their Motion to Dismiss and memorandum on file, to (at least, if nothing more) observe a hint or intimation of the essential character of the "verified" declarations of the complaint of record.

Defendants Morsell and Morsell, and Arthur L. Morsell, Chairman of the "Ethics and Grievances" committee of the Milwaukee Patent Law Association, 1944-1945, was the first defendant attorney to file a Motion to Dismiss. The copy of the Motion, served on the plaintiff, is fabricated with the memorandum in support positioned as the top paper. The fine choice of this attorney's language, superiorily endorsed and supported by the trial judge, in

the very first two sentences of the memorandum declares, the following:

> "The complaint in this case charges General Motors Corporation and General Motors Sales Corporation with infringement of a certain patent allegedly assigned to plaintiff and relating to a windshield cleaner. Other charges are also made against General Motors." (Tr. 22.)

Defendant, Elwin A. Andrus, attorney, and active member of the Milwaukee Patent Law Association, 1944-1945, and past President, 1937-1938, in his fine choice of language, superiorily endorsed and supported by the trial judge, asserts in paragraph 2 of his memorandum in support of his Motion to Dismiss, as follows:

> "The complaint is one for patent infringement against General Motors Corporation and General Motors Sales Corporation and does not clearly define any claim against this defendant." (Tr. 44.)

Defendants, Wheelers, attorneys, and active members of the Milwaukee Patent Law Association, 1944-1945, in their fine choice of language, superiorily endorsed and supported by the trial judge, over the signature of S. L. Wheeler, a member of the Board of Directors and Past President, 1935-1936, of the herein said association, assert, in their Brief in support of Motion, paragraph 1, item 1, as follows:

> "1. By express statement of the complaint and its prayer for relief, the complaint purports to be based on the patent laws and to seek relief against infringement." (Tr. 49.)

The Corporate defendants General Motors Corporation and General Motors Sales Corporation appeared generally, through the firm of attorneys, Lines, Spooner and Quarles, represented by Louis Quarles, attorney, and David A. Fox, attorney and generally alleged son-in-law of attorney Louis Quarles, and presumably another person, indistinctly identified, by writing, as counsel.

Louis Quarles and David A. Fox, attorneys, and active members of the Milwaukee Patent Law Association, 1944-1945, and a probable certain, yet, indistinct person of Counsel, in their fine choice of language, superiorily endorsed and supported by the trial judge, over the signature of Louis Quarles and David A. Fox, (Louis Quarles of all fantasies a member of the Ethics and Grievances committee, 1944-1945, and Past President, 1934-1935, of the herein said association), assert, as follows:

Re: The Corporate defendants' attorneys' Motion to Dismiss (Tr. 52),

Excerpts,—

"(a) With respect to the allegations relative to plaintiff's alleged damage *because of violations by the corporate defendants, General Motors Corporation and General Motors Sales Corporation, of the Anti-Trust Laws,* . . ." (Tr. 52.) (Italics Supplied.)

"(b) That the allegations with respect to asserted violations of the 'United States Criminal Code', the 'Rules of Practice of the United States Patent Office', and the 'Compiled Laws of Michigan 1929' and the 'Wisconsin Statutes', by the individual (and their firms) defendants, . . ." (Tr. 53.)

"6. . . .

(a) The two corporate defendants, General Motors Corporation and General Motors Sales Corporation, *are charged with infringement of a patent and with violating the Anti-Trust Laws to plaintiff's damage.*" (Tr. 54.) (Italics Supplied.)

"(b) The other defendants, certain law firms and the individual partners thereof, all of whom are former attorneys for plaintiff or the patentee of patent in suit No. 1,630,921 are charged, either separately or jointly with mal-practice, and violating the 'Criminal Code of the United States', the 'United States Patent Laws', the 'Rules of Practice of the United States Patent Office', the 'Compiled Laws of Michigan, 1929' and the 'Wisconsin Statutes'." (Tr. 54.)

Re: The Corporate defendants' attorneys' memorandum in support of their Motion to Dismiss, declare,—

Excerpts,—

"The complaint, . . . seems to attempt to *charge several causes of action against the two corporate defendants,* three law firms and the individual partners of the latter. *These attorneys* seem to have been former attorneys either of plaintiff or of the patentee of the patent in suit. *They are charged with various villainies* among which is *the charge* that they gave plaintiff *poor service* in that *they failed to bring actions for infringement of the patent in suit* (Complaint par. 6 for instance)." (Tr. 56.) (Italics Supplied.)

"Paragraph 3 of the complaint seems to give some indication of what is in the plaintiff's mind in bringing this action. We shall start with it and try to give the Court some idea of what the complaint seems to allege. It is as follows:

> " 'The Jurisdiction is founded on the existance (sic.) of the fact that this is a civil suit for accounting and profits and damages brought under the Patent Laws of the United States, and for three-fold damages for injuries to plaintiff's business by reason of Monopoly and Combinations violations forbidden in the Anti-Trust Laws, and violations for conspiracy and fraud of the United States Criminal Code, and of violations of the Compiled Laws of Michigan 1929, and of violations of the Wisconsin Statutes.' " (Tr. 56.)

"The charge of infringement *is directed* against the corporate defendants alone . . ." (Tr. 57.) (Italics Supplied.)

"In addition, *the plaintiff alleges damages* because of violation by the two corporate defendants of the Clayton Act . . ." (Tr. 57.) (Italics Supplied.)

"Paragraph 27 returns to plaintiff's attorney Warren G. Wheeler and charges:

> (a) 'the forced implied contingent fee contract said to be in effect by the said defendant attorney is unfair';

(b) the 'ultimate facts of plaintiff association with said attorney defendant (Warren G. Wheeler) constitutes breaches of duties and unprofessional conduct to said plaintiff after establishment of a fiduciary relation';—what these 'breaches of duties' are is not set forth other than in paragraph 6, near the end on page 9, where Warren G. Wheeler is included in those who caused the delay so that plaintiff's patent rights 'would not be tried or judicially heard.'

(c) that said Wheeler, 'on or before January 30, 1941 entered into a conspiracy with one said Charles T. Knapp and L. E. Pitner to confuse plaintiff and destroy plaintiff's Patent Contract rights';—who Knapp and Pitner are and what they have to do with this action does not further appear.

(d) That said Wheeler 'did obtain monies from other than his principal plaintiff client, and all with intent to fraudulently act injuriously against and with special damage to his principal plaintiff client and unlawfully, to the benefit of said attorney Warren G. Wheeler';— what this means does not further appear from the complaint" (Tr. 60, 61).

". . . None of the acts of the corporate defendants are alleged to have any connection with the other defendants. An attempt is made to assert claims of patent infringement, damage by reason of violation of the anti-trust laws and fraud against the corporate defendants. None of these alleged acts is charged against any of the other defendants. The other defendants, who are former attorneys of plaintiff or the patentee of the patent in suit, are charged with conspiracy, failure to press infringement suits and other acts of mal-practice. No allegation is made which connects the corporate defendants with any of these acts charged against the other defendants" (Tr. 62).

". . . the complaint which seeks damages for alleged violation of the anti-trust laws by General Motors

Corporation and General Motors Sales Corporation . . ." (Tr. 62).

"This charge is contained in paragraph numbered 11 . . ." (Tr. 63).

"D. ALLEGED FRAUD OF EMPLOYEES OF DEFENDANT, GENERAL MOTORS CORPORATION, IMMATERIAL AND IRRELEVANT."

Paragraphs 24, 25 and 26 should be stricken as irrelevant and immaterial. Paragraph 24 sets forth that Louis N. Spencer was a patent attorney for General Motors Corporation and is the patentee of Patent No. 1,694,757 (not in suit here); that LaRue W. Patee is an employee of General Motors Corporation and before whom said Spencer made a "false" oath to his said patent. Paragraph 25 sets forth "conspiracy, fraud and forgery" because said Spencer and Patee "did cause subsequently the records of the United States Government in the Patent Office to be false as falsified by said employees of defendant General Motors Corporation" because of "the false recording of an imaginary, but supposedly, existing oath reliance was placed by the examining staff and The Commissioner of Patents" to plaintiff's detriment. Paragraph 26 sets forth that those employees filed a false assignment of said Spencer patent to General Motors Corporation and thereby plaintiff was damaged (Tr. 65).

Hearing on the treatment of the complaint and the several defendants Motions to Dismiss came on in the trial court, July 2, 1945.

It is submitted that only the reading of the certified Transcript of Proceedings, dated July 2, 1945, and now on file in this court, would suffice rather than a restatement now, to instruct better any proper interested adjudicator with respect to,—

1. The almost complete self-imposed blindness and arbitrary desertion of fidelity of the plaintiff's cause by the, then, plaintiff's attorney of record, although the plaintiff had paid in full the demand of the attorney, e.g., $150.00 (Tr. 68).
2. The kangaroo practices foisted upon the plaintiff, *propria personna,* when presenting his arguments, before the court, which practices or conduct of the court directing the plaintiff's argument from one defendant to another defendant without completion of any respective presentation, disregards, perverts and prejudicially moves against any full, fair, reasonable, intelligent setting forth of the plaintiff's argument.

The case presents an unusual situation, (possibly not to the certain defendant attorneys), yet, in your petitioner's view, strongly urged, it is abundantly clear, the defendants, either attorneys or corporate, in addition to the trial judge, have not been misled to any "true" prejudice by the Original Complaint on file, providing reasonable interpretation is given to the fine choice of language, superiorily endorsed and supported by the trial judge, used by respective defendant attorneys to convey ideas as to the charges contained within the complaint.

The preponderance of weight of the declarations of the defendant attorneys respectively places the complaint beyond reasonable argument.

Not any one of the defendant attorneys found it necessary to file a motion to make the complaint more certain.

The sum and substance of the hearing in Court July 2, 1945 was that the plaintiff, conformable to the will and directions of the trial judge, filed an amended complaint on July 23, 1945 (Tr. 126).

Subsequently, the corporate attorneys filed a second Motion to Dismiss and to Strike (Tr. 143).

Re The Corporate defendants' attorneys' memorandum in support of their second Motion to Dismiss,—

Excerpts,—

"The present amended complaint attempts to state a cause of action for infringement of Birely Patent No. 1,630,921, filed March 12, 1926, and granted May 31, 1927, for Windshield Cleaner" (Tr. 147).

". . . yet it complains of patent infringement in Count I and states, as a conclusion, that, by reason of an alleged violation of the Anti-Trust Laws, plaintiff is damaged in Count II" (Tr. 147).

"That said violations of said acts of Congress by said defendants General Motors Corporation and General Motors Sales Corporation, and violations of the Antitrust Laws of the Wisconsin Statutes, Chapter 133, by defendants caused plaintiff to be deprived of his legal rights to continue, profitably, the promotion of his business, which business originally grew rapidly under the said Birely Patent Rights assigned to plaintiff, and thereby defendants, General Motors Corporation and General Motors Sales Corporation substantially destroyed plaintiff's business and caused great loss and damage to the plaintiff" (Complaint, pp. 14-15) (Tr. 149).

"Paragraph 11

The garbled allegations of this paragraph seem to be to the effect that plaintiff's prior attorneys *erroneously considered* that the aforesaid Spencer prior art patent was a limitation upon the Birely patent in suit" (Tr. 153) (Emphasis Supplied).

"Paragraph 12

Here again we have a number of garbled allegations concerning the aforesaid Spencer prior art patent with a number of wild charges (but verified by plaintiff) to the general effect that Spencer, and one Patee, who are employees of General Motors Corporation, have violated certain rules and laws with respect to

the filing of the application for the Spencer patent" (Tr. 153) (Brackets inserted).

"Paragraph 13 is as follows:

'Par. 13. That for an additional count for special damages, for violations of the said Compiled Laws of Michigan and United States Code of Laws hereinbefore set out in Paragraph 12 and to the same extent and as though the allegation of said violations were set out in full herein against said defendant, plaintiff alleges special damages, due to said violations by defendant referred to herein by reference, due to said employee Patee recording as a Notary Public the verification of hereinbefore said Spencer assignment to defendant General Motors Corporation' " (Tr. 154).

Plaintiff's opposition in answer appears at Transcript 156.

A reading of the certified Transcript of Proceedings, dated September 10, 1945, on file in this court, will clearly show the following propositions pleaded to the trial court, and thus, presumably known to the court, by David A. Fox, attorney, associated with one certain Louis Quarles, attorney, each and/or both associated with Lines, Spooner and Quarles, attorneys for the Corporate defendants General Motors Corporation and General Motors Sales Corporation, to wit,—

at Page 2, excerpts,—

"Mr. Fox: There are four separate grounds to the motion.

The Court: Well, as I recall—I haven't read it completely—when you had a number of these patent attorneys he claimed he owns the patent and that General Motors has infringed on it.

Mr. Fox: That is correct." . . .

"The Court: Well, certainly, the cause of action can properly be brought in this District to say 'I am an owner of the patent and you violated it.'

Mr. Fox: We recognize that. *There is a cause of action pleaded for a patent infringement against General Motors Corporation, and that is not attacked in this motion.*"

at Page 5 excerpts,—

"Mr. Fox: The Complaint is in two counts. The first count asserts a right to recovery for patent infringement, . . .

Now, the only way you can answer or explain that proposition is to examine the Complaint itself, and I could go through each paragraph individually.

The Court: No, you don't need to do that. You can just say it doesn't."

at Page 6, excerpts,—

". . . General Motors Sales Corporation . . . *except* in the final paragraphs of the Complaint in the Prayer for relief there is a Prayer for relief for infringement against General Motors Sales Corporation.

Now, the third point of the motion deals with the second count of the Complaint *which asks the damages for alleged injury caused to the plaintiff by violations of the Sherman and Clayton Acts by the defendant* . . . The only allegations of Count 2 concerning plaintiff's alleged damage are excerpts that I would like to read. It alleges:

> 'That, plaintiff subsequent to manufacturing and vending articles of said Letters Patent was subject to great loss caused by violation of the defendants General Motors Corporation and General Motors Sales Corporation of the Antitrust Laws and Clayton Act . . .'

That occurs in paragraph 1 on page 13."

at Page 7, excerpts,—

"Then, there is another excerpt that deals with the topic:

> 'That said violations of said acts of Congress by said defendants General Motors Corporation and General Motors Sales Corporation, and violations of the Antitrust Laws of the Wisconsin

Statutes, Chapter 133, by defendants caused plaintiff to be deprived of his legal rights to continue, profitably, the promotion of his business, which business originally grew rapidly under the said Birely Patent Rights assigned to plaintiff, and thereby defendants, General Motors Corporation and General Motors Sales Corporation substantially destroyed plaintiff's business and caused great loss and damage to the plaintiff.'

Now, they are the only allegations where damage to plaintiff is mentioned *except* in the Prayer at the end of the Complaint, in more or less the same words.

The Court: Liberally construing the Complaint, isn't that a sufficient allegation?

. . .

The Court: He sets out that he was the owner of this patent, that the General Motors used it, and that he suffered damages by reason of their using it. It would almost follow if they had a good patent and they utilized it.

Mr. Fox: That is true, your honor, under Count 1 of his Complaint he makes that allegation as to General Motors,"

at Page 8, excerpts,—

"as to infringement.

Now, the Complaint is in two parts, two separate counts; the infringement count, and then this second count where he is attempting to recover damages because of alleged violations of the Sherman and Clayton Act.

The Court: The Anti-Trust Act, I see. All right."

at Page 10, excerpts,—

"Now, the third (correction, fourth) point of our motion is a motion to strike certain specific parts of the Complaint, and I will have to take those up individually. (Correction above supplied by plaintiff.)

Some of them, the requests to strike, are based upon matters that have already been discussed. Others are more for reasons of technical defect in pleading.

Now, the first specific matter which we ask to be stricken is Paragraph 3 of Count 1."

The other additional paragraphs requested to be stricken, for reasons of technical defects in pleading are, Paragraphs 4, 6, 10, 11, 12 and 13 of Count 1.

at Page 12, excerpts,—

> "Now, these separate and distinct items that we have asked be stricken operate partly to remove the unnecessary party, General Motors Sales Corporation, but they do not deprive the Complaint of a statement of a cause of action for infringement under the patent against General Motors Corporation. There is enough material left in there after these are out to cover everything that has been said in this Complaint in setting up this cause of action for infringement. All of this material, specific material, is for surplusage and is not an effort on our part to put the Complaint in such shape that it doesn't state what he has already stated as a real cause of action."

at Page 13, excerpts,—

> "The Court: Mr. Grant, you may submit the matter you have in reply.
>
> Mr. Grant: Thank you.
>
> The Court: Mr. Roy Grant appearing *in propria*,
>
> Mr. Grant: Preliminary to getting into this discussion, your honor, I have drafted a memorandum here taking out of this Amended Complaint all of the paragraphs which defendants' counsel has asked to be stricken. It is really amusing, and I am only a layman, claim to be nothing more, but if you strike out the various paragraphs that they ask for and in the memorandum strike out the various paragraphs also that they refer to, you don't have a defendant pleaded in the case—you don't have a defendant pleaded in the case—and he appears before you and tells you that if you strike all that he ask you to strike that there will still be a case before the court. There wouldn't be a defendant in the case.
>
> The Court: How about the General Motors?
>
> Mr. Grant: There wouldn't even be the General Motors Company.

The Court: Why not?

Mr. Grant: In the 'Introduction' of his memorandum, paragraph 2: 'This motion is to dismiss as to the defendant, General Motors Sales Corporation, because that corporation was dissolved on January 2, 1942, as appears in paragraph 12 of the' "

at Page 14, excerpts,—

" 'original complaint.'

The following paragraph says: 'In addition to the above, the motion seeks to strike paragraphs 2 . . .' Paragraph 2 is the defendant, General Motors Corporation.

The Court: Which cause of action are you talking about now; the first or the second?

Mr. Grant: Well, this is his motion to strike and dismiss relative to the Amended Complaint.

Mr. Fox: Mr. Grant, that is an error, evidently.

Mr. Grant: I wouldn't know that.

. . .

The Court: The motion speaks for itself; 3, 4, 6, 10, 11, 12 and 13 he seeks to strike.

. . .

Mr. Grant: I didn't know the argument would be limited to the motion.

The Court: The motion is what counts. Of course, you may call attention to the memorandum at any time. Go ahead."

at Page 16, excerpts,—

"Mr. Grant: Paragraph 2 they set out—and still working on the objections—

The Court: All right.

Mr. Grant: Paragraph 2, they set out: 'That Count I (comprising paragraphs 1 to 13 inclusive) be dismissed as to defendant, General Motors Sales Corporation, on the ground that that corporation is not charged with any of the acts complained of therein.'

The Court: Show me where you can where the Sales Corporation is alleged to have infringed the patent that you own. As I understood Mr. Fox, he says there was no such charge in the Complaint any-

where except that in the Prayer for relief, which isn't properly part of the Complaint, anyway. I thought maybe in view of the motion being made that you would be able to point out to me, since there is no place in the Complaint, that there is a charge that the Sales Company infringed. Now, where do you say that?

Mr. Grant: Well, on page 4: 'Replying to paragraph 2,' "

at page 17, excerpts,—

defendant General Motors Sales Corporation is charged with acts of infringement, and recovery for said infringements, gains, profits, advantages, as well as damages, is prayed for, to wit:

"1. Paragraph 10, original complaint—"

"The Court: 'Original complaint.' What about the Amended Complaint? We are now working on the Amended Complaint. I can't go referring back to the original. Paragraph 10 here?

Mr. Grant: The Amended Complaint is not the full Complaint, is it?

The Court: It certainly is. You stated it as an Amended Complaint. Did you intend it to be sort of supplemental to the other?

Mr. Grant: Yes, sir.

Mr. Fox: It isn't in that form, your honor.

The Court: Your Amended Complaint has Count 1, Paragraphs 1, 2, 3, 4, 5. It seems to be a complete document in itself. It doesn't refer to anything else and shouldn't. It ought to be all here. I can't take an Amended Complaint, something in there, and say, 'Well, here we got an original Complaint somewhere that has something in addition.'

Mr. Grant: The only reference we have—

The Court: Just a minute until I get through. You have sixteen pages of an Amended Complaint, in which your charges are divided up into Count 1 and Count 2, apparently. Now that"

at page 18, excerpts,—

"ought to be complete in itself without referring to any—

Mr. Grant: Well, you couldn't charge General Motors only with the infringement because General Motors from October 23 of 1936 to, I think, January 2 of 1942 manufactured the devices or the automobiles and the accessories, however did not dispose of the alleged patent infringements to the public. They sold them to a 100-per cent wholly-owned subsidiary, the General Motors Sales Corporation, and there would be no damages, as I understand it, if they manufactured billions of them and hid them somewhere. I might never know it and wouldn't care as long as they didn't damage my market, but their wholly-owned subsidiary, the General Motors Sales Corporation, did the selling and did the dirty work that caused the damage to me, and I attempted to plead it.

The Court: I don't think you are correct in that. I think if General Motors infringes your patent, manufactured the device covered by your patent and disposed of it, whether they went through the intermediary sales Corporation or whether they did it directly, it doesn't seem to make any difference.

Mr. Grant: It would in this respect, your honor, as I see it, and what I have in mind is this: that the wholly-owned sales corporation can produce their sales at a profit to the General Motors Corporation but in pleading the profits of just the General Motors Corporation I would be stripped of a great amount of money that the General Motors Sales Corporation made,"

at page 19, excerpts,—

"and that is a wholly-owned subsidiary of General Motors Corporation. I would have to plead it because General Motors didn't damage me in the sale of it; they transferred title only to the General Motors Sales Corporation. The General Motors Sales Corporation must be in the picture.

The Court: Why didn't you put them in the picture, then? You haven't.

Mr. Grant: I felt that I did, and especially in view of paragraph 9 of the Complaint—the original Complaint I have reference to—and it is a paragraph relative to the 'statutory notice on articles of the invention made and vended by the plaintiff by marking and fixing thereon the word "Patent" ', etc., according to 'Rules of Practice in the United States Patent Office, and has given written notice to defendant General Motors Corporation of its said infringement of the Birely Patent."

In Paragraph 10:

"That, the plaintiff relies on said marking, matters and things hereinbefore set out in paragraph 9 of this complaint with respect to defendant the dissolved General Motors Sales Corporation, except only this dissolved said corporation was not given written notice of its infringement, but to the same extent and as though the allegations of said paragraph 9 were set out in full herein against said defendant General Motors Sales Corporation and said paragraph 9 is incorporated herein by reference and made a part of the"

at page 20, excerpts,—

"allegations of this count against said General Motors Sales Corporation."

And they are pleaded in the Prayer for relief and I felt that that covered it. Now, if it doesn't, I ask that it may.

"The Court: If you left out something that you had in the original Complaint, thinking that was also in, you should be given an opportunity to incorporate that in your Amended Complaint, but your Amended Complaint ought to stand for itself. It is in that form. It is a long document, and if you wanted to allege infringement by this company you don't have to take over a page or two."

(Plaintiff's note inserted here. The original charge of infringement was set out in the 2d preceding paragraph herein. The number of lines total eleven (11).)

"Mr. Grant: I felt these paragraphs would revert back to the original Complaint when I was drawing this. That is what I had in mind.

The Court: All right. Go ahead."

at page 21, excerpts,—

"Mr. Grant: Passing on to 4, in the objections: 'Defendants, General Motors Corporation and General Motors Sales Corporation, further move to strike the following paragraphs of Count I of the Amended Complaint on the following grounds:' And they have seven or eight different items or sub-paragraphs there."

In answer to that:

"Plaintiff further objects to defendants motion, paragraph 4, and sub-paragraph starting on printed line 8, page 2, on grounds of legal insufficiency of 'special defense' presented by motion and plaintiff believes Rule 8 (a) (2) is erroneously applied by defendants in that, this single numbered averment does not constitute plaintiff's short and plain statement of claim showing that pleader is entitled to relief, but rather, said paragraph 6 is supported by"

at page 22, excerpts,—

"Rule 10 (b),—The contents of each (averments of claim . . . in numbered paragraphs) of which shall be limited as far as practicable to a statement of a single set of circumstances."

We don't claim that the paragraph in reference here, paragraph 6, is our plain, short statement of claim. We don't claim that. It is just one of the paragraphs in the count, and it is a single set of circumstances.

Now, they go on and state here "that it violates Rule 8 (e) in that each averment is not 'simple, concise, and direct' . . . ".

"Plaintiff denies a violation of Rule 8 (e) and al-

leges said paragraph 6 of Plaintiff's amended complaint is precise pleading, overcoming to the contrary otherwise certain disputable presumptions of fact drawn from inferences and pleads only such supporting particulars or conclusive ultimate facts contrary to such presumptions, and said paragraph 6 is pleaded pursuant to Rule 9 (d), 'Official Document or Act,' and further, said stronger ultimate facts therein said paragraph 6 are pleaded for the purpose of introducing evidence with respect to said stronger ultimate facts and without surprise at trial to the defendants, and said evidence or facts necessary to plaintiff to effectuate substantial justice, and substantiate or establish the existence or truth by evidence the real, rather than otherwise presumptive honest, just, upright, loyal, not false, conduct of the defendant General Motors Corporation with''

at page 23, excerpts,—

''respect, to defendant's General Motors Corporation co-pending patents, to plaintiff's rights, and to injury and damages by defendants of plaintiff's rights pleaded therein plaintiff's complaint and amended complaint.''

Going back to the motion

''that it sets forth evidence; that it sets forth matter that has nothing to do with the claim of plaintiff, but relates to prior patents which are defenses of defendants, if anything, Plaintiff denies that said paragraph 6, quote, 'that it sets forth matter that has nothing to do with the claim of the plaintiff, but relates to prior patents which are defenses of defendants if anything,' and plaintiff qualifies defendants word 'prior' and cojoins with it the word 'co-pending' and plaintiff further denies such prior co-pending applications or patents are defenses 'only' of defendants, if anything.''

at page 26, excerpts,—

''Mr. Grant: I thank you. 'Replying to paragraph 2, defendant General Motors Sales Corporation *is*

charged with acts of infringement'—we covered that, and I felt that they were properly pleaded as a defendant under paragraph 10 of the original Complaint, and paragraph 1, page 19, that is, the Prayer of the original Complaint; paragraph 2, page 19, Prayer of the original Complaint (Emphasis supplied).

4. Introductory Paragraph, page 15, Prayer, Amended Complaint.

5. Paragraph 2, page 15, Prayer, amended complaint.

Now, if you feel that that is not adequate to support the issues before the court I do ask the right to take and amend that and receive your directives on it."

at page 27, excerpts,—

"In paragraph 3 they state here that it should be dismissed because it does not state a cause of action under the anti-trust laws since no special damage is allaged.

(a) A cause of action is not required to be pleaded, rather, Rule 8 (a) (2), only a short plain statement of the claim showing that the pleader is entitled to relief; and

(b) Plaintiff further alleges in opposition, Section 4, Violation of Anti Trust Laws—Damages to persons injured (38 Stat. 731; 15 U. S. C. A., Sec. 15) does not require 'special damage' as a condition precedent to a claim for relief or to sustain a claim for relief, and plaintiff therefore strongly urges the Court to void this defense of the defendants.

I can read that statute. It is only six or seven lines long.

The Court: No.

Mr. Grant: All right. With respect to paragraph 4, replying to paragraph 4, 'plaintiff alleges in opposition to the following sub-paragraphs as follows:

Par. III. Answering said paragraph plaintiff alleges Public Law 740, an Act, chapter 589, 77th Congress, 2nd session, Oct. 10, 13, 1942 removed any bar of any existing statute of Limitation applicable to

violations of the Antitrust Laws of The United States, by suspending said statutes until June 30, 1945. (Copy of said Public Law is hereto attached as plaintiff's exhibit and made a part hereof.)' "

The Public Act is:

"That the running of any existing"

at page 28, excerpts,—

"statute of limitations applicable to violations of the antitrust laws of the United States, now indictable or subject to civil proceedings under any existing statutes, shall be suspended until June 30, 1945, or until such earlier time as the Congress by concurrent resolution, or the President, may designate. This Act shall apply to acts, offenses, or transactions where the existing statute of limitations has not yet fully run, but it shall not apply to acts, offenses, or transactions which are clearly barred by the provisions of existing laws.

Sec. 2. That this Act shall be in force and effect from and after the date of its passage.

Approved, October 10, 1942."

at page 29, verbatim,—

"Par. VI. Does not violate Rule 8 (a) (2) but rather, within said paragraph is particular averments of substantial material ultimate facts on which plaintiff relies on, which can be replied to by the defendant, and further in said paragraph is material allegations of circumstances, Rule 10 (b) to which plaintiff means to offer evidence in support of plaintiff's claim for relief.

Paragraph 10. Plaintiff insists vigorously the said prior Spencer Patent, (assignee General Motors Corporation, and defendant herein) alleged as the proximate cause of special damage and specifically stated (Rule 9, F. R. C. P.) in said paragraph 10, and said paragraph is an averment or a material ultimate fact to which plaintiff means to offer evidence, and to which said averment defendant can reply; and said prior,

but with emphasis on co-pending, said patent can be offered in evidence by the plaintiff.

Paragraph 11. Plaintiff emphatically insists that the *'smear'* conclusions alleged by defendants' attorneys fully meet the test of a legally insufficient defense of alleged 'garbled allegations' . . .".

There is no legal defense. In fact, the Federal Rules of Civil Procedure have no rules as to allegations. They might be redundant, but "garbled allegations" is not a part of the legal defense so stated in the Federal Rules of Civil Procedure.

". . . rather than the pleadings of plaintiff as to the subsequent conditions, supplementary to the proximate"

at page 30, verbatim,—

"cause alleged, between the defendants' original act or omission and the injurious consequences to plaintiff, for which said consequences, the defendant, the original wrong-doer, is alleged to be liable; and said paragraph is a material averment of an ultimate fact to which the plaintiff means to offer evidence, and plaintiff vigorously urges the Court to strike this 'special defense' of defendants which in law constitutes no defense and is irrelevant, immaterial and not responsive.

"Paragraph 12. Plaintiff strongly urges Court to Judicially notice that on motion to dismiss and to strike, plaintiff's well pleaded ultimate facts are admitted by defendants, and as such admissions, plaintiff again insists that the 'Smear' conclusions alleged be defendants' attorneys fully meet the test of a legally insufficient defense of alleged 'garbled allegations', rather than the pleadings of plaintiff as to unlawful precedent conditions well pleaded as a material averment of a single set of circumstances (Rule 10 (b) F. R. C. P.), to which defendant can answer, and to which plaintiff means to offer evidence, and plaintiff vigorously urges the Court to strike this

'special defense' of defendants which in law constitutes no defense and is irrelevant, immaterial, and not responsive.

"Paragraph 13. By reference plaintiff again vigorously asserts the allegations pleaded in paragraph 12, *supra*.

"Wherefore, plaintiff prays that defendants take nothing by its motion on file herein; that the defendants be required"

at Page 31, verbatim,—

"to file their answer as the case is not one which has been recently filed, and the defendant parties are all familiar with the subject matter involved."

Respectfully submitted.

"The Court: Very well. The matter will be taken under advisement.

Mr. Grant: Your honor, can I make one more reference here in court, and that is with reference to Beegle v. Thompson citation by defendants' counsel?

The Court: Go ahead.

Mr. Grant: Under No. 5. In that case defendant had infringed plaintiff's patent by sale of certain type of iron and it was determined the defendant had not infringed plaintiff's patent. There remained nothing on which to charge unfair competition or on which to create a liability. The charge of unfair competition in Count 2 is a separate charge, and we are asking for relief and it is not predicated on the basis that unfair competition existed; only (if) infringement existed. That is not our charge in our Complaint. Thank you. (If in bracket inserted by plaintiff.)

The Court: Court will be in recess."

64 days thereafter, September 10, 1945, the trial court filed a formal opinion (Tr. 170) with respect to the procedural hearing of the Corporate defendants' attorney's Motion to Dismiss and to Strike and the plaintiff's opposition of record in connection with the sufficiency of the veri-

fied allegations (which for the purpose of this motion must be taken as true) of the consolidated complaint agreed to. (Agreement, page 20, Tr. of Proceedings, Sept. 10, 1945.)

The trial court in its formal opinion firmly establishes any "true" conviction that the overt acts of abuses of discretion outside the Federal Rules of Civil Procedure and of the Court's prejudice judicially maintained against this plaintiff, and that there are persons who will unreasonably and seriously interfere with the plaintiff's interest and inalienable and statutory Civil rights by foreclosing procedurally the plaintiff's provisional remedies in not having the plaintiff's claims for relief exhibited in open court or his cause heard with judicial fairness, and that the Federal Rules of Civil Procedure *can be* and *have been* repudiated, overridden and trampled underfoot in the United States District Court for the Eastern District of Wisconsin, all of which is clearly in evidence therein the formal opinion grossly deficient in details so as to properly inform the plaintiff, yet high handedly summarily dismissing plaintiff's verified issues of fact and complete counts, yet, giving summarily unwarranted relief by final judgment on demurrer to corporate defendants in connection with material verified averments of fraud, infringement as to one defendant, and Anti-Trust law violations to the private damage of the plaintiff.

The corporate defendants under date of November 19, 1945, effective November 23, 1945, mailed a proposed order *"for Entry Upon"* the Court's formal opinion, to be heard three days later, November 26, 1945 (Tr. 176).

Plaintiff filed a brief in strong opposition to the hearing, scheduled for November 26, 1945, with the clerk of the trial court and served corporate counsel (Tr. 180).

The result is set out on page 3 of the certified tran-

script of proceedings, dated November 26, 1945, on file in this court. However, page 3 excerpts are,—

"The Court: Well, if his order complies with what I indicated in my opinion that is all there is to it—we won't spend any more time on it—the date of my opinion being November 13th.

Mr. Grant: That is right.

The Court: And you may examine his proposed order and if there is anything specific about it that you think doesn't comply with the opinion this court has rendered you may call my attention to it.

Mr. Grant: What time can I have, your honor?

The Court: Well, you can have a couple days. You can have until Wednesday at five o'clock. If there is anything about that order you think doesn't comply with the opinion you can tell it to me and I won't consider the order before five o'clock on Wednesday.

Mr. Grant: Thank you very much.

(Which were all the proceedings had in the above entitled matter at said time.)"

On November 26, 1945 plaintiff duly filed and served an application to the court, with affidavit in support, for the provisional remedy of *Judgment by Default* against the corporate defendants premised on 5 separate propositions (Tr. 190).

On November 29, 1945, at 9:30 A. M., (the time for filing having been enlarged by order of the trial judge) plaintiff filed an *"Affidavit and Answer to Order of the Court"* as so directed to do in court under date of November 26, 1945. Among other declarations in the answer and affidavit plaintiff complains of grieving procedural violations by corporate defendants and of existing oppression under Due Process of Law and Equal Protection of the Laws (Tr. 201).

On November 29, 1945, presumably only, at 3 P. M., the corporate defendants' attorneys, Lines, Spooner and

Quarles order for *"Entry Upon"* the court's opinion was adopted verbatim by the trial judge and signed by him irrespective of this plaintiff's opposition set forth in plaintiff's affidavit and answer to Court, the contents of which presumably were fresh in the court's mind, the said answer having been filed with his secretary at 9:30 A. M., in the morning thereof November 29, 1945 (Tr. 220).

On November 30, 1945 the corporate attorneys mailed to the plaintiff notice respecting corporate attorneys order for *"Entry Upon"* the Court's opinion adopted verbatim and signed by the trial court (Tr. 223).

Also, on November 30, 1945, the corporate attorneys mailed to plaintiff a *Memorandum of Defendants in Opposition to Motion for Default Judgment*, together with, Affidavit of Service (Tr. 224, to 227).

Within this memorandum corporate defendants endorsed the fact the plaintiff has exhibited great effort to maintain his substantive rights from being destroyed by procedural machinations, regardless of being foisted on him, by whosoever.

At Transcript 226, the following appears,—

> "Practically the entire time since the filing of the complaint has been consumed in efforts to bring plaintiff's complaint and amended complaint into a form which could be answered. *The Plaintiff Has Contested Every Step of this Effort. . . .*"

The clear record is fantastically defiled and polluted by any other interpretation, exaggerated, as to the "true" information set forth in the complaint and amended complaint in connection with the "true" ideas known and held by the corporate attorneys and so expressed in their motions, memorandums, and arguments of record before the trial court.

At page 9, of the Certified Transcript of Proceedings,

dated December 3, 1945, on file in this court, on Motion of plaintiff for Judgment by Default against General Motors Corporation and General Motors Sales Corporation, the plaintiff was denied by the trial judge the use of any law of the Wisconsin Statutes, and it appears,—

(Grant): "Wisconsin Statute. . . ."—

"The Court: You don't need to quote any Wisconsin Statute."

at Page 11 and 12, same certified transcript, appears,—

"The Court: Let me ask at this point: Has there been an answer filed in this case up to this date?

Mr. Grant: No, sir, there has been no answer.

The Court: I think you are taking an awful lot of time here.

Mr. Grant: It is the only way I can bring it out to you.

The Court: You filed a Complaint here in which you joined in about a half dozen different attorneys and you claimed they were in conspiracy against you, and these attorneys came in.

Mr. Grant: Yes. I couldn't get my day in court, your honor.

The Court: Yes. But what I am getting at is with all these preliminary motions even if the defendants were in default there has been no chance of bringing this case on for trial. The court could, as a matter of discretion, allow them to file their answer.

Mr. Grant: Your honor, I go along with you, but you have cancelled out those defendants prior to July 23rd when the Amended Complaint was filed, and there is only one motion by the defendant since that date, and that was to bring on a hearing September 10, 1945. Originally, it was scheduled for August 20th, I think, or 21st, and my father died on the 15th, and I had to ask for your consideration to postpone it because of the statements which I have already referred to.

The Court: You were granted that.

Mr. Grant: That I was. And the only intervening

time there has been three weeks from August 17th or 20th, there, to September 10th when it came on for hearing. Now, since that time the fact remains that there are 205 days here that these issues have not been joined, and there is a lot of things that can happen where a plaintiff charges fraud to the defendants, that if they are guilty of the fraud, as I charge, they can be guilty of a lot of other things damaging to the plaintiff within 205 days, and the issues are not joined in that Complaint as I filed it or in the Amended Complaint, . . ."

Page 11 also indicates the total interruption by the court of the plaintiff's presentation to the court of plaintiff's application for Judgment by Default against the corporate defendants General Motors Corporation and General Motors Sales Corporation. Further hearing was denied to this plaintiff after the presentation had reached approximately half-way of the 4th application. The fifth application was not before the court, in any sense during the hearing.

At Transcript 229, page 15 of same certified transcript of proceedings, appears colloquy, or motion otherwise, of attorney and officer of the court, Louis Quarles, and parts are quoted,—

". . . I have underscored certain parts in red."

"I have indicated them in red in the affidavits, copy of it."

On December 3, 1945, the trial court judge signed a final order, denying plaintiff the provisional remedies he sought in his application for Judgment by Default. The order also abuses the lawful discretion of the trial court by abridging, without any cause, not to mention good cause, shown or presented to the court by the corporate defendants, the time in which the defendants may answer as prescribed by the Federal Rules of Civil Procedure then and there in effect (Tr. 228, or, Appendix "B").

On December 4, 1945, the trial court judge signed an order of the corporate defendants' attorneys' Lines, Spooner and Quarles, with the colloquy of the motion of attorney Louis Quarles of December 3, 1945 seemingly fresh in his mind, to the effect, that matter directed to the court's attention the same being indicated,—

"by the reporter's markings",

upon said affidavit of Roy Grant, Jr., filed November 29, 1945, be and the same is hereby stricken as scandalous; 5:vp (Tr. 230, or Appendix "C").

Plaintiff's Notice of Appeal appears at Transcript 231.

Plaintiff's *'Ex parte''* application for permission to withdraw certain specified original papers appears at (Tr. 242); Order to withdraw (Tr. 245); Receipt of clerk for return (Tr. 248).

The statement of appellees, pursuant to Section 3 of Rule 10, United States Court of Appeals appears at (Tr. 251).

Plaintiff-Appellant's designation of Record appears at (Tr. 254).

Defendant-Appellees' designation of additional contents of Record on Appeal appears at (Tr. 267).

Plaintiff-Appellant's statement of Points appears at (Tr. 283).

Defendant-Appellees attorneys Motion to Dismiss the Appeal of the appellant, Roy Grant, Jr., for want of jurisdiction appears at (Tr. 301). The Brief at (Tr. 304).

Plaintiff-Appellant's Emergency Petition to void, but not expunge from the record, corporate defendants' attorneys' Motion to Dismiss Appeal appears at (Tr. 311).

The Appellant's Brief appears at (Tr. 325).

Appellant's second Emergency Petition, for Correction of the Record appears at (Tr. 344).

Defendants-Appellees' opposition to Appellant's Emergency Petition appears at (Tr. 355).

The Appellate Court's Notice of Order denying appellant's Emergency Petition appears at (Tr. 358).

Plaintiff-Appellant's petition for rehearing is set out at (Tr. 363).

The Appellate Court's order denying Appellant's petition for Rehearing for Correction of the record appears at (Tr. 380).

Plaintiff-Appellant's inquiry to Appellate Court re disposition of Appellee's Motion to Dismiss and Appellant's Emergency Petition to void Appellee's Motion, appears at (Tr. 381).

The Appellate Court's order, dismissing the Plaintiff-Appellant's appeal for the reason that the orders appealed from are interlocutory and not final, appears at (Tr. 382).

Plaintiff-Appellant's Petition for stay of mandate pending application for certiorari to the Supreme Court of the United States appears at (Tr. 381).

Plaintiff-Appellant's Petition for the certification of transcript of the record including designated proceedings in the Appellate Court to the Supreme Court of the United States appears at (Tr. 396).

The Appellate Court's order to transmit to the Supreme Court the certified transcript of record appears at (Tr. 411).

The letter from the Appellate Court, clerk, advising the record will be held by the office of the Appellate Court, appears at (Tr. 412).

Petitioner's petition, for extending period for applying for Writ of Certiorari to the Supreme Court of the United States appears at (Tr. 416).

The order, of the Honorable Mr. Justice Wiley Rutledge,

Associate Justice of the Supreme Court of the United States, extending time within which to file petition for certiorari, appears at (Tr. 430) and at Appendix "E" herein.

Letter, July 29, 1946, from the Honorable Clerk's office of the Supreme Court of the United States, advising, the references in your petition and brief should be to the typewritten record, appears at (Tr. 436) and at Appendix "F" herein.

This petition seeks a writ of certiorari, to review the judgments of the United States District Court for the Eastern District of Wisconsin, entered November 30, 1945, December 3, 1945, and December 4, 1945; to review the judgment of the Circuit Court of Appeals for the Seventh Circuit, entered March 12, 1946, dismissing plaintiff-appellant's appeal for the reason the orders appealed from are interlocutory and not final.

II.

JURISDICTION TO REVIEW JUDGMENTS.

The jurisdiction of this Court to review the judgment of the Circuit Court of Appeals is conferred by Section 240 (a) of the Judicial Code, as amended by the act of February 13, 1925, Chapter 229, 43 Stat. 936 and amendments thereto May 22, 1939 included, which is as follows:

> "In any case, civil or criminal, in a circuit court of appeals, or in the Court of Appeals of the District of Columbia, it shall be competent for the Supreme Court of the United States, upon the petition of any party thereto, whether Government or other litigant, to require by certiorari, either before or after a judgment or decree by such lower court, that the cause be certified to the Supreme Court for determination by it with the same power and authority, and with like effect, as if the cause had been brought there by unrestricted writ of error or appeal."

The date of the Circuit Court of Appeals judgment sought to be reviewed is March 12, 1946.

III.

QUESTIONS PRESENTED.

1. Whether in hearing, on Monday, November 26, 1945 defendants' attorneys, Lines, Spooner and Quarles, Order forwarded by regular mail to plaintiff on Monday, November 19, 1945, in hearing said Order over the objections and authorities cited in the Plaintiff's Brief, said Plaintiff's Brief filed with the clerk of Court, B. H. Westfahl, at 10:30 A. M. Saturday, November 24, 1945, said Plaintiff's Brief served by Registered mail on opposing Counsel Rule 5 (b), F. R. C. P., November 23, 1945, in hearing said defendants' attorneys, Lines, Spooner and Quarles, Order for *entry upon* the Court's opinion, or was the plaintiff unduly prejudiced by abuse of discretion outside the law of the Federal Rules of Civil Procedure, by lack of due process of law, and Equal Protection of the laws.

2. Whether on November 26, 1945 in limiting, by Judicial decree, to two (2) days, November 27, 1945, and November 28, 1945 at 5 P. M., as an essential condition to plaintiff's opportunity for plaintiff to prepare and file with the Trial Court plaintiff's answer in opposition to any portions of defendants' attorneys, Lines, Spooner and Quarles, Order for entry upon the Court's opinion, or, is the conduct of the trial court unduly oppressive to the plaintiff and, an abuse of discretion infringing on plaintiff's Civil Rights of Due Process of Law.

3. Whether at the tme 4:50 P. M. the 28th day of November, 1945 plaintiff phoned the office of Judge F. Ryan Duffy for an extension of time in order that plaintiff could fundamentally perform manually and physically some of the essential requirements of the November 26,

1945 decree of Judge F. Ryan Duffy, said decree detrimental to plaintiff, a layman, in scant miserly duration of time, said scant miserly duration of time decreed as essential condition, for plaintiff to file his answer with the Court in opposition to defendants' attorneys Lines, Spooner and Quarles, Order for entry upon the Court's opinion, said scant miserly duration of time, as essential condition, was extended to overnight and to the following morning, dead line, 10 A. M. November 29, 1945; in conditioning the original said decree by then (4:50 P. M. November 28, 1945) also ordering something else extra, in addition, namely, copies of plaintiff's answer in opposition to be served also on defendants' attorney David A. Fox of the firm of defendants' attorneys, Lines, Spooner and Quarles, said copies of plaintiff's answer in opposition to said defendants' attorneys, Order for entry upon the Court's opinion, or is the conduct of the trial court oppressive to the plaintiff and, an abuse of discretion, and an infringement on plaintiff's civil rights of Due Process of Law.

4. Whether, in granting, defendants' attorneys, Lines, Spooner and Quarles, Order for entry upon the Court's opinion, quotation from attached *notice* "in the form hereto attached for entry upon the Court's opinion" the Court thereby not duly and not fully advised in open Court of the plaintiff's position in opposition against said defendants' attorneys, Lines, Spooner and Quarles, Order for entry upon the Court's opinion, or is the conduct of the trial court oppressive to the plaintiff and, an abuse of discretion and an infringement on plaintiff's civil rights of Due Process of Law of Notice and full hearing in the premises in open court, and a denial of Equal Protection of the Laws.

5. Whether, in granting judicial notice on November 26, 1945 to an enlarged, not true, but feigned invented Order

by defendants' attorneys, Lines, Spooner and Quarles, said feigned invented Order by defendants' attorneys purporting to be founded truly on the opinion of the Court dated November 13, 1945 and filed in the discretion of the Court, November 13, 1945, or does the conduct of the Court endorse and support fraud, and collusion, and deny to plaintiff by excesses in abuse of discretion plaintiff's civil rights of Due Process of Law of Notice and full hearing in the premises in open court, and a denial of Equal Process of the Laws.

6. Whether in granting, judicial notice on November 26, 1945 to an enlarged, not true, but feigned invented Order by defendants' attorneys, Lines, Spooner and Quarles, said feigned invented Order by defendants' attorneys' purporting to be founded truly on the opinion of the Court dated November 13, 1945, filed November 13, 1945, said opinion of the Court dated and filed, 64 days, after a hearing on September 10, 1945 on the Motion of defendants' attorneys, Lines, Spooner and Quarles, to dismiss and to strike certain paragraphs, when on September 10, 1945 the Court took the matter of disposing of said Motion under advisement, or does the conduct of the court in 64 days under advisement abuse discretion outside of the time factors set out under the Federal Rules of Civil Procedure and Rules of the Trial Court to the prejudice of the plaintiff in connection with the hearing and disposition of motion.

7. Is there any credible evidence to support the granting, on November 29, 1945 defendants' attorneys, Lines, Spooner and Quarles, Order, said Order feigned and invented, enlarged but not true, said Order purporting to be founded truly on the opinion of the Court dated November 13, 1945, (in granting) Paragraphs 2, 3, 5, B., C., D., E., F., and G., of said feigned Order or, is the order clearly

erroneous for want of appropriate findings upon the evidence and argument of record, said record obviously lacking citations or appropriate citations of authorities by said defendants' attorneys in argument to support said granting, and a denial to plaintiff of provisional remedies pursuant to substantive law by final summary procedural judicial decree on corporate defendants motion to dismiss, or on demurrer.

8. Whether in holding, that the plaintiff's verified pleadings of the Original Complaint and of the Amended Complaint and the plaintiff's Affidavits presented no justiciable issue of fact with respect to defendants' attorneys, Lines, Spooner and Quarles, unverified pleadings and Order for entry upon the Court's Opinion dated November 13, 1945, certain paragraphs of said unverified Order numbered II, III, IV, V B., C., D., E., F., and G., all of said Order, for entry upon the Court's Opinion, enlarged, not true, but feigned and invented and purporting to be founded truly on the opinion of the Court dated November 13, 1945, or does the conduct of the court endorse and support fraud, and collusion, and deny to plaintiff by excesses in abuse of discretion plaintiff's civil rights of Due Process of Law of Notice and full hearing in the premises in open court, and a denial of Equal Process of the Laws.

9. If there is credible evidence to support the dismissal for all judicial purposes, plaintiff's verified Complaint and verified Amended Complaint with respect to General Motors Sales Corporation, or does the conduct of the court endorse and support judicial fraud, and collusion, and deny to plaintiff by excesses in abuse of discretion plaintiff's civil rights of Equal Protection of the Law, and deny to plaintiff provisional remedies pursuant to substantive law by final summary procedural judicial

decree of dismissal of Count 1 and Count 2 of consolidated complaint on corporate defendants' Motion to Dismiss, or on demurrer.

10. If there is credible evidence to support a legal defense refusing plaintiff a trial on the controversial issues of verified fact with respect to plaintiff's damages in verified Count 2, of Amended Complaint, said Count 2 alleging violations of prohibitions of the Anti Trust and Clayton Act Laws of the United States and the Anti Trust Laws of the Wisconsin Statutes by defendants General Motors Corporation and General Motors Sales Corporation to the damage of this herein individual Plaintiff-Appellant residing within the Eastern District of Wisconsin, or does the conduct of the court endorse and support judicial fraud, and collusion, and deny to plaintiff by excesses in abuse of discretion plaintiff's civil rights of Equal Protection of the Law, and deny to plaintiff provisional remedies pursuant to substantive law by final summary procedural judicial decree of dismissal of Count 2 of consolidated complaint on corporate defendants' motion to dismiss, or on demurrer.

11. Whether in refusing plaintiff a trial on the controversial issues of verified fact within plaintiff's pleadings, said issues of verified fact dismissed on grounds not based on one of the statutory grounds for dismissal, said issues of verified fact dismissed by defendants' attorneys, Lines, Spooner and Quarles, Order for entry upon the Court's opinion dated November 13, 1945, said defendants' attorneys' Order adopted by F. Ryan Duffy, United States District Judge, re-dated November 29, 1945 at 3 P. M., said issues of verified fact dismissed by defendants' attorneys, Order adopted by F. Ryan Duffy, United States District Judge, said verified issues of fact in Paragraphs V B., C., D., E., F., and G. of said defendants'

attorneys' Order for entry upon the Court's Opinion, or does the conduct of the court endorse and support fraud, and collusion, and deny to plaintiff by excesses in abuse of discretion plaintiff's civil rights of Due Process of Law of Notice and full hearing in the premises in open court, and a denial of Equal Protection of the Laws.

12. Whether in granting, November 29, 1945 at 3 P. M., Paragraph V C. of defendants' attorneys, Lines, Spooner and Quarles, Order for entry upon the Court's Opinion dated November 13, 1945, the trial Court granted more than said defendants' attorneys petitioned the Court to grant with respect to Point 4, Paragraph 6, in defendants General Motors Corporation and General Motors Sales Corporation Motion to dismiss and to strike dated, July 31, 1945, or does the granting of more by granting less demonstrate the conduct of the court with intent to support fraud, and collusion, and deny to plaintiff by excesses in abuse of discretion plaintiff's civil rights of Due Process of Law of Notice and full hearing in the premises in open court, and a denial of Equal Protection of the Laws.

13. Whether in granting, Paragraph VI of defendants' attorneys', Lines, Spooner and Quarles, Order for entry upon the Court's Opinion, did F. Ryan Duffy, United States District Judge, prejudiced this plaintiff on November 29, 1945 at 3 P. M., by abuse of discretion by enlarging,

(a) beyond the law of the F. R. C. P.;

(b) beyond the law of the Wisconsin Statutes;

each either in the singular, or both in the conjunctive,— the time within which defendants may file their answer, or without good cause shown, can the promulgated Federal Rules of Civil Procedure be abridged, overruled, and trampled underfoot to the prejudice of the plaintiff.

14. Whether in granting, November 29, 1945 at 3 P. M., Paragraphs V F., G., of defendants' attorneys', Lines,

Spooner and Quarles, Order for entry upon the Court's opinion, the plaintiff has been denied and refused a trial of the verified averments of plaintiff's Complaint and Amended Complaint of substantial relevant material verified facts alleging; briefly,—

False impersonation of a public officer;
Counterfeiting or forgery, alteration of public document;
Same, uttering of instrument;
Violation of United States Code of Laws;
Making, forging, counterfeiting, or altering Letters Patents;

all said verified substantive facts alleged all to the injury of this plaintiff, said verified facts not subject on statutory grounds to a point of Motion to strike on technicalities; yet said sordid reprehensible allegations admitted by defendants on point of Motion to strike dated July 31, 1945, or can the plaintiff's provisional remedies of substantive law be abridged by abuses of discretion under the Federal Rules of Civil Procedure and the plaintiff denied Equal Protection of the Law.

15. Whether in holding, November 29, 1945 at 3 P. M., each point of defendants General Motors Corporation and General Motors Sales Corporation Motion dated July 31, 1945 to dismiss or to strike constituted a Motion, in defendants' attorneys' Lines, Spooner and Quarles, Order for entry upon the Court's opinion, said Order signed by F. Ryan Duffy, U. S. District Judge under re-date of November 29, 1945 at 3 P. M., or does the whole motion to dismiss, a demurrer, fall if a material part of the pleading is sustained and other points of the motion denied.

16. Whether in the entry of defendants' attorneys' Order for entry upon the Court's opinion in favor of the defendants General Motors Corporation and General Motors Sales Corporation on the 29th day of November, 1945,

the trial court denied to plaintiff the inalienable right to trial for redress of alleged verified grievances, or if Equal Protection of the Laws for the plaintiff can be abridged by infringement of substantive law by superior corporate power.

17. Whether in refusing, any one, several, or all of plaintiff's five (5) Applications for Judgment by Default, plaintiff, was prejudiced by abuse of discretion, was prejudiced by denial of Due Process of full hearing in open Court on the Merits of No. 4 application for Judgment by Default and no hearing in open Court or otherwise in any sense whatsoever on No. 5 Application for Judgment by Default, was prejudiced by Trial Court depriving plaintiff of finding of facts on the merits of the affidavit and pleadings in said Applications for Judgment by Default, or if provisional remedies under the Federal Rules of Civil Procedure are void when the defendants before the court represent superior corporate power and thus, the plaintiff shall be stripped of Equal Protection of the Laws.

18. Whether on December 3, 1945, in open Court to deny plaintiff in his argument before the Court the use of any Wisconsin Statute, the Court stating, "You don't need to quote any Wisconsin Statute. We are under the Federal Rules of Civil Procedure," or whether tyrannical archaic excesses of abuse of discretion can strip the plaintiff, a citizen of the United States residing in the state of Wisconsin, of the protection afforded under the substantive law of the Wisconsin Statutes.

19. Whether in holding, December 3, 1945 in the language of the prefix to the order dated December 3, 1945, signed by F. Ryan Duffy, United States District Judge, the settled and determined statement by the Court namely, "the plaintiff having in open Court elected to stand on the first amended complaint;" therein and thereby said order

making false a record of the United States Courts, or whether the ugly truth can not be transcended by substituted beautiful falsehoods in the records, even judicial decrees, of the United States Courts.

20. Whether in granting, on December 3, 1945 the "first" order of the Court in favor of the defendants General Motors Corporation and General Motors Sales Corporation, and in favor of defendants' attorneys' Lines, Spooner and Quarles, enlarging the time, within which defendants may file their answer, or without good cause shown, can the promulgated Federal Rules of Civil Procedure be abridged, overruled and trampled underfoot by abuse of discretion with prejudice to plaintiff by abridging the law of procedure in connection with proper time to answer.

21. Whether in the entry of Order in favor of the defendants General Motors Corporation and General Motors Sales Corporation and in favor of defendants' attorneys' Lines, Spooner and Quarles, said Order dated December 3, 1945, the trial court denied plaintiff the right to determine what law he would follow in pursuit of his verified allegations, denied plaintiff the right of "true" representations in the records of the United States Courts, denied plaintiff recourse to provisional remedies in connection with time to answer, or, does the conduct of the court endorse and support denial of inalienable civil rights and Equal Protection of the Law.

22. Whether Order dated December 4, 1945. In granting, defendants', General Motors Corporation and General Motors Sales Corporation, attorneys' Lines Spooner and Quarles, Order, dated December 4, 1945, therein said Order an Overt Act of fraud and deceit of said defendants' attorneys' Lines, Spooner and Quarles, said Overt Act of fraud and deceit in said Order making false a record of the

United States Courts, did the court prejudice this plaintiff by tyrannical excesses of abuse of discretion, and did the court subscribe to falsifying the records of the United States Courts, or, is fraud and deceit, and the making false a record of the United States Courts a legal act above reproach.

23. Whether Order dated December 4, 1945. In aiding and abetting the making false a record of the United States Courts by the Overt Act of signing F. Ryan Duffy, over the title of "United States District Judge, on December 4, 1945, to the Order of defendants' General Motors Corporation and General Motors Sales Corporation attorneys' Lines, Spooner and Quarles, dated December 4, 1945, did the court prejudice this plaintiff by tyrannical excesses of abuse of discretion, and did the court subscribe to falsifying the records of the United States Courts, or is aiding and abetting the making false a record of the United States Courts an act of good faith within the United States Judiciary.

24. Whether in hearing, an oral Motion in disguise as a speaking suggestion in open Court December 3, 1945 by attorney Louis Quarles of the firm of attorneys Lines, Spooner and Quarles, attorneys for defendants General Motors Corporation and General Motors Sales Corporation, did the court permit excesses in abuse of discretion, or do the Federal Rules of Civil Procedure prohibit, on argument of one Motion, a moving party from making another motion orally.

25. Whether in hearing, the oral Motion and speaking suggestion in open Court December 3, 1945 by attorney Louis Quarles of the firm of attorneys Lines, Spooner and Quarles without Due Process of "Notice" to plaintiff and full hearing in open Court so that the Court could be fully advised in the premises, did the court deny the plaintiff

Due Process of Law, Equal Protection of the Law, an infringement on plaintiff's procedural rights under the Federal Rules of Civil Procedure or, may the superior corporate defendants transcend the procedural law of the Federal Rules of Civil Procedure.

26. Whether in the entry of Order dated December 4, 1945 said Order making false a record of the United States Courts, yet, in favor of defendants General Motors Corporation and General Motors Sales Corporation and defendants' attorneys' Lines, Spooner and Quarles, did the court by tyrannical excesses of abuse of discretion subscribe to falsifying the records of the United States Courts, or, is fraud and deceit and destroying good faith in the records of the United States Courts a legal act above reproach.

IV.

REASONS RELIED ON FOR ALLOWANCE OF WRIT.

1. The preponderance of evidence does not show the court resolved all doubts in favor of the plaintiff's consolidated complaint.

2. The final order of the Appellate Court is just another way of saying the plaintiff can be stripped of provisional remedies; and machinations under procedural rules can defeat substantive law. It is submitted that such a construction is in clear contravention of applicable decisions and authorities of record.

3. Re Anti-Trust Law and Clayton Act, Count 2, of consolidated complaint, there is nothing in the Statute, Section 15, Title 15, of the United States Code Annotated, requiring proof of actual private damage to be pleaded,

rather the law is clear in authorizing private persons claiming injury by reason of violation of the Anti-Trust Laws to sue for treble damages.

It is not contended the consolidated complaint is the evidence.

It is enough if it fairly appears from the record, as it does here, that a claim for relief under the authorization of substantive law is made and sufficiently informs the corporate defendants.

It is a question in each case whether there is erroneous representations in the allegations, and on this premise it is strongly urged the corporate defendants can not avail themselves of summary dismissal under procedural law, thus abridging the substantive law authorizing claims for relief by private persons for private damages suffered because of violations of the Anti-Trust Laws by other known persons or corporations. Under the substantive law of Section 15, Title 15, General Motors Corporation and General Motors Sales Corporation are not expressly declared exempt.

4. Re plaintiff's application for default judgments against the corporate defendants it is pointed out that plaintiff's affidavit was not met by any sworn statement of the corporate defendants traversing any one or all of the plaintiff's pleadings of existing facts, thus entitling the plaintiff to Judgment by Default against the corporate defendants.

American justice strongly urges, if not demands that a Judgment by Default be given to the plaintiff. The corporate defendants, well supported by counsel, should not be allowed to flaunt violations of the laws with impunity.

5. Re court taking disposition of Motion to Dismiss and to strike under advisement.

The Federal Rules of Civil Procedure, applicable to the proceedings in the trial court limits the time for answer. Federal Rule 12, says

> The service of any motion provided for in this rule alters the time fixed by these rules for serving any required responsive pleadings as follows, unless a different time is fixed by order of the court:
>
> (1) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading may be served within 10 days after notice of the court's action;
>
> (2) If the court grants a motion for a more definite statement or for a bill of particulars, the responsive pleading may be served within ten days after the service of the more definite statement or bill of particulars.

The best reason is that the court taking the motion under advisement is not such a condition as set out under Rule 12.

6. The record is clear the dilatory pleas, interposed by the corporate defendants attorneys, especially in connection with their motion to dismiss and to strike, heard September 10, 1945 with respect to paragraphs 3, 4, 6, 10, 11, 12, and 13 are nothing but a sham in the out-dated form of a demurrer, and the corporate defendants, themselves, declare their reasons are premised on alleged technical defects in pleading. (Page 10, Certified Transcript of Proceedings, September 10, 1945.)

The Federal Rules of Civil Procedure clearly outlaw a dilatory defense premised on technicalities by saying,—

> "No technical forms of pleading or motions are required."

Rule 12 limits the defenses which may be made by motion. The Rules set forth:

> "(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim . . . shall be asserted in the responsive plead-

ing thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) lack of jurisdiction over the subject matter,
(2) lack of jurisdiction over the person,
(3) improper venue,
(4) insufficiency of process,
(5) insufficiency of service of process,
(6) failure to state a claim upon which relief can be granted."

The best reason is that none of these specific grounds set forth are such as, the corporate defendants attorneys dilatory plea of "technical defect in pleading."

7. Abuse of Discretion.

8. Denial of Due Process of Law.

9. Denial of Equal Protection of the Laws.

10. Denial of Civil Rights.

11. False Records in the United States Courts:

Wherefore, your petitioner, Roy Grant, Jr., respectively prays that the Writ of Certiorari be granted, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just.

I have the honor to remain,

Respectfully yours,

ROY GRANT, JR.,
Petitioner.

ROY GRANT, JR.,
P. O. Box 1695,
Milwaukee 1, Wisconsin.

APPENDIX.

LINES, SPOONER & QUARLES
Attorneys at Law

EXHIBIT "A".

IN THE DISTRICT COURT OF THE UNITED STATES,
For the Eastern District of Wisconsin.

Roy Grant, Jr., doing business as No Sleet Windshield Heater Company, *Plaintiff,* vs. General Motors Corporation, a corporation, and General Motors Sales Corporation, a dissolved corporation, *Defendants.*	Civil Action No. 2295.

ORDER.

The motion of defendants in the above matter to dismiss and to strike having come on for hearing upon oral argument, and briefs having been submitted, and the opinion of the Court having been rendered thereon, It Is Hereby Ordered:—

I.

That the motion of defendant, General Motors Sales Corporation, that the bill of Complaint be dismissed as to it, on the ground that said corporation is dissolved, be and the same is hereby denied.

II.

That the motion of defendant, General Motors Sales Corporation, that Count I of the Complaint comprising

Paragraphs 1 to 13, inclusive, be dismissed as to it, on the ground that said corporation is not charged with any of the acts complained of therein, is granted, and the portion of the Complaint referred to be and the same is hereby dismissed as to said General Motors Sales Corporation.

III.

That the motion of both defendants that Count II of the Complaint (comprising Paragraph 1) be dismissed on the ground that it does not state a cause of action under the anti-trust laws is granted, and the portion of the Complaint referred to be and the same is hereby dismissed as to both defendants.

IV.

That upon motion of the Court, plaintiff shall have twenty (20) days within which he may move to amend the Complaint with respect to the word "unduly" appearing in Paragraph 5 of the first Count of the Complaint as set forth in line 13 on page 4 of the Complaint.

V.

That the motion of defendants to strike specific portions of the first Count of the Complaint is hereby granted or denied as follows:

A. As to Paragraph 3 denied.

B. As to the reference to the anti-trust laws in Paragraph 4 granted, and the words "and anti-trust laws" in the last line thereof be and the same are hereby stricken.

C. As to Paragraph 6 with respect only to a list of patents appearing on page 6 of the Complaint the same extending from and including the word "were" in line 1 and extending to the end of said page granted, and the portion referred to be and the same is hereby stricken.

D. As to Paragraph 10 granted, and said paragraph in its entirety be and the same is hereby stricken.

E. As to Paragraph 11 granted, and said paragraph in its entirety be and the same is hereby stricken.

F. As to Paragraph 12 granted, and said paragraph in its entirety be and the same is hereby stricken.

G. As to Paragraph 13 granted, and said paragraph in its entirety be and the same is hereby stricken.

VI.

That the defendants shall have twenty (20) days from the date upon which plaintiff shall amend his Complaint, or from the date of expiration of the time given plaintiff to amend in case plaintiff shall fail to amend his Complaint, as provided for in Paragraph 4 of this Order, within which defendants may file their answer.

Dated November 29, 1945, at 3 P. M.

F. RYAN DUFFY,
United States District Judge.

(Endorsed)

Civil Action No. 2295.

IN THE DISTRICT COURT OF THE UNITED STATES,

For the Eastern District of Wisconsin.

Roy Grant, Jr., doing business as No Sleet Windshield Heater Company,

Plaintiff,

vs.

General Motors Corporation, a corporation, *et al.*,
Defendants.

Order on Defendants' Motion to Dismiss and to Strike.
Filed Nov. 29, 1945, B. H. Westfahl, Clerk.

EXHIBIT "B."

UNITED STATES DISTRICT COURT,
Eastern District of Wisconsin.

Roy Grant, Jr., doing business as No Sleet Windshield Heater Company,
Plaintiff,
vs.
General Motors Corporation and General Motors Sales Corporation,
Defendants.
} Civil Action No. 2295.

This day came the parties by their counsel and this cause came on to be heard upon the application of the plaintiff for judgment by default against defendants General Motors Corporation and General Motors Sales Corporation, was argued and submitted; and the plaintiff having in open court elected to stand on the first amended complaint and not file a second amended complaint; on consideration thereof.

It Is Ordered that said application be and the same hereby is denied with leave to said defendants to file their answers to amended complaint within twenty days.

F. RYAN DUFFY,
United States District Judge.

December 3, 1945.

(Endorsed)

Civil Action No. 2295.

UNITED STATES DISTRICT COURT,
Eastern District of Wisconsin.

Roy Grant, Jr., etc.,
Plaintiff,

vs.

General Motors Corporation and General Motors Sales Corporation,
Defendants.

Order denying application of plaintiff for default judgment, with leave to defendants to file answer to amended complaint within twenty days.

Filed Dec. 3, 1945, B. H. Westfahl, Clerk.

EXHIBIT "C."

UNITED STATES DISTRICT COURT,

Eastern District of Wisconsin.

Roy Grant, Jr., doing business as No Sleet Windshield Heater Company, *Plaintiff,* *vs.* General Motors Corporation and General Motors Sales Corporation, *Defendants.*	Civil Action No. 2295.

ORDER.

(Filed Dec. 4, 1945, B. H. Westfahl, Clerk.)

Upon suggestion made in open Court December 3, 1945, by Louis Quarles, attorney for defendants above named, plaintiff, Roy Grant, Jr., being present appearing *pro per,* that plaintiff withdraw his Affidavit filed November 29, 1945 because of alleged scandalous matter appearing therein, and the Court's attention having been directed to such matter the same being indicated by the reporter's markings upon said Affidavit of said Roy Grant, Jr., filed in this matter November 29, 1945;

It Is Ordered on the motion of the Court that the matter indicated by the reporter's markings upon said Affidavit filed by said Roy Grant, Jr., November 29, 1945, be and the same is hereby stricken as scandalous.

Dated: December 4, 1945.

F. RYAN DUFFY,
United States District Judge.

EXHIBIT "D."

UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

March 12, 1946.

Before:

Hon. William M. Sparks, Circuit Judge,
Hon. J. Earl Major, Circuit Judge,
Hon. Otto Kerner, Circuit Judge.

Roy Grant, Jr., D/B/A No Sleet Windshield Heater Co.,
Plaintiff-Appellant,
No. 9013 *vs.*
General Motors Corporation & General Motors Sales Corporation,
Defendants-Appellees.

Appeal from the District Court of the United States for the Eastern District of Wisconsin.

It is ordered by the Court that the motion of counsel for appellees to dismiss this appeal be, and the same is hereby, sustained.

It is ordered and adjudged by the Court that this appeal be, and the same is hereby, dismissed, for the reason that the orders appealed from are interlocutory and not final.

EXHIBIT "E."

SUPREME COURT OF THE UNITED STATES,

No. ....., October Term, 1946.

Roy Grant, Jr., d.b.a. No Sleet Windshield Heater Company,

Petitioner,

vs.

General Motors Corporation, *et al.*

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI.

Upon Consideration of the application of the petitioner,

It Is Ordered that the time for filing a petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 11th, 1946.

(Signed) WILEY RUTLEDGE,
Associate Justice of the Supreme Court of the United States.

Dated this 11th day of June, 1946.

EXHIBIT "F."

Office of the Clerk,

SUPREME COURT OF THE UNITED STATES,

Washington 13, D. C.

July 29, 1946.

Mr. Roy Grant,

Milwaukee, Wisconsin.

Dear Sir:

Replying to your letter of the 25th, you are advised that in view of the fact that the record in the case of Grant *vs.* General Motors Corporation, *et al.*, will not be printed at this time, the references in your petition and brief should be to the typewritten record.

Yours truly,

CHARLES ELMORE CROPLEY,
Clerk,

By E. P. CULLINAN,
E. P. CULLINAN,
Assistant.

EPC:tw
AIR MAIL

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945.

Docket No. 378

ROY GRANT, JR.,
DOING BUSINESS AS
NO SLEET WINDSHIELD HEATER COMPANY,
Plaintiff-Appellant,
Petitioner,

vs.

GENERAL MOTORS CORPORATION,
A FOREIGN CORPORATION, ET AL.,
Defendants-Appellees.

PETITION TO CORRECT DIMINUTION OF RECORD.

ROY GRANT, JR.,
Milwaukee, Wisconsin,
Petitioner.

THE BUNTHORP-WARREN PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

INDEX.

Regulations Cited

Federal Rules of Civil Procedure

Circuit Court of Appeals

for the Seventh Circuit

Transcript of Proceedings

General Statutes

United States Code of Laws

Other Statutes Cited

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945.

Docket No. .....

ROY GRANT, JR.,
DOING BUSINESS AS
NO SLEET WINDSHIELD HEATER COMPANY,
Plaintiff-Appellant,

vs.

GENERAL MOTORS CORPORATION,
A FOREIGN CORPORATION, ET AL.,
Defendants-Appellees.

PETITION TO CORRECT DIMINUTION OF RECORD AND AFFIDAVIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

May it please the Court:

I.

Your petitioner, ROY GRANT, JR., *propria personna,* pursuant to Rule 17 of the REVISED RULES OF THE SUPREME COURT OF THE UNITED STATES, entitled CERTIORARI TO CORRECT DIMINUTION OF RECORD, respectfully applies to this Court for a direct "Order", said order to the Honorable Clerk of this Supreme Court, directing, for proper inclusion, in the Printed Transcript of Record to be reviewed by this Court, the offset photostatic copy imprints or exhibits of either existing,

co-pending, or subsequent art, duly pleaded and incorporated by reference and made applicable to the "Original" Complaint (pp. 5, 6) and amended Complaint (pp. 5, 6, 7) consolidated and filed in the Trial Court, in this instant action, *e. g.*,—

Heating Attachment

1. **BECKER**

	Applied for	Patent No.	Granted
BECKER	1/26/25	1-642-292	9/13/27

1 (a) and **BECKER** co-pending

Glass Clearing Device

BECKER (co-pending)	8/1/27	1-778-882	10/21/30

•

Clear Vision Sliding Shields

2. **SIMPSON**

March 23, 1925 **SIMPSON, Assignor to Fisher Body Corporation**

June 25, 1926 **FISHER, Assignor to General Motors Corporation**

SIMPSON	3/25/25	1-604-760	10/26/26

•

Means for Removing Snow & Ice from Windshields

3. **SPENCER**

Sept. 30, 1925 **SPENCER, Assignor to General Motors Corporation**

SPENCER	10/10/25	1-694-757	12/11/28

•

Motor Vehicle

4. **MILLER**

MILLER, *Assignor to Packard Motor Car Company, a Michigan Corporation*

MILLER	4/21/37	2-176-143	10/17/39

•

Your petitioner, respectfully makes a further application for the said direct Order of this Supreme Court of the United States to be extended and to be made applicable for the correction of the certified record on appeal of the pleadings, judgment, and other papers in the trial court, certified, by the clerk of this trial court after comparison with the originals now on file and remaining of record, as true copies although the said record of true copies, so certified, has been made fraudulent and counterfeit,—

1. **by illegal meddling, tampering and alteration resulting in modification and change of certain parts and thereby changing its force as legal evidence,**
2. **by mutilation thereby destroying or removing a material part so as to render the said record imperfect,**
3. **by improper official interference by the clerk of the trial court to influence improperly either on appeal or review the "true" merits in this instant action in open defiance of certain criminal sections of the United States Code of Laws pertinent to making false a record of the United States Courts,**

all of which illegal misrepresentations, seemingly at least covering up official neglect and favorable only to the defendants' side of the action, are false representations unfavorably prejudicial to this plaintiff on review, and

Further, the said order to be made applicable for the substitution of exhibits or true copies contained in the sheaf of documents, accompanying this petition to this Supreme Court and incorporated herein by reference and made applicable hereto, to succeed as a natural necessity or take the place of the copies certified and meant to signify the semblance of "true" copies **yet** certain of the copies so certified and self-involving making false a record of the United States Courts, and the said certification by the clerk of the trial court a deliberate self-evident proposition, presumptively official, notwithstanding otherwise the obvious

exhibition of capricious, tyrannical, self-executing villainies showing plainly,—

(a) discrediting abuse of falsely assumed authority resulting in the imperfect discharge of official obligations;

(b) a deliberate refusal to certify a true record;

(c) the actual certification of a false record under the seal of the District Court of the United States.

In consequence thereof the reasons hereinbefore cited, either in the singular or in the conjunctive, each portion of the record now offered is subject to the following exception taken either, to the original analogous copy, certified, and now on file or, withheld from the certified record by the clerk of the trial court:—

Your petitioner strongly urges the correction and substitutions of certain parts of the certified record on appeal, filed January 28, 1946 with the Appellate Court, based on observations stated herein and for all practical purposes diligently noted on examination of the certified record in the clerk's office of the Circuit Court of Appeals for the Seventh Circuit, Chicago, Illinois on January 30, 1946, and the notations thus obtained were rechecked with the original copies on file in the clerk's office of the District Court, Milwaukee, Wisconsin on February 4, 1946.

An Emergency Petition for Correction of the Record directed to the said illegal misrepresentations was duly filed by the plaintiff-appellant with the Appellate Court on February 14, 1946 to which the Appellate Court entered on February 21, 1946 an "Order" denying the aforesaid petition.

Thereon receipt of the said "Order" a Petition for Rehearing of plaintiff's Emergency Petition for Correction of the Record was diligently prepared and duly filed on March 2, 1946 to which the Appellate Court entered on March 6,

1946 an "Order" overruling the plaintiff-appellant's Petition for Rehearing.

The constituent parts or segments of the "designated" COMPLETE OFFICIALLY KNOWN RECORD AND ALL THE PROCEEDINGS AND EVIDENCE (Rule 75 (d), F. R. C. P.) certified to the Appellate Court to which specific exceptions are directed are as follows:

The numbered items following are correspondingly numbered with mutually related items in plaintiff's designation of COMPLETE OFFICIALLY KNOWN RECORD dated January 18, 1946 or, numbered in their chronological order.

I

Item No.

2. May 12, 1945 Letter, Grant to U. S. Marshall

The substitution of the proffered exhibit should be granted for the reason the copy certified as a pretended "true" copy is defective, the top has been cut off and the malicious destruction is further seen by noting the act of sabotage whereby the letterhead printing has been struck. This item as certified is nothing less than the abuse of intricate undue influence illegally practiced in the clerk's office resulting in, shabby and despicable representation of the plaintiff and, the uttering of a false paper, the paper made false by forgery and counterfeiting as practiced on a copy of the original instrument of public record.

II

Item No.

4. May 17, 1945 Letter, Grant to clerk Federal District Court.

The substitution of the proffered exhibit should be granted for the reason the certain copy certified as a "true" copy is only a certified false spurious pretense as the "true" copy has been made defective, fraudulently by altering, after the record on appeal under seal was deposited with the clerk of the District Court and thereafter uttered and published under the seal of the District Court with intent to defraud the United States.

Alteration to the top of the letterhead resulting in the fraudulent lack of this essential to completeness and thereby the shabby, despicable and spurious representation of this plaintiff is deemed a forgery by alteration, erasure, obliteration, and a spoilation of certain parts of this instrument, **all of which it is strongly urged has not been prompted by honest motives, in good faith, and all of which is irreconcilably opposed to and operates not impartially to this plaintiff, with intent to defraud and/or to incite vexatious and troublesome correctional legal proceedings for the protection of plaintiff's inalienable civil rights against the uttering or publishing of forged paper and the forgery and counterfeiting making false a public record of the United States courts, and in addition thereto, the scheme or artifice having been devised or intended to defraud, the manifest overt act was perfected, publicly exhibited, and completed by transmitting such said paper through the United States Mail, to the Circuit Court of Appeals for the Seventh Circuit, Chicago, Illinois, for the purpose of review and determination on appeal by judicial officers of the United States Courts, in violation of the statutory prohibitions of the United States Postal Laws and Regulations,**

and the said violations of the United States Code of Laws is now being called to the official attention of appropriate authorities, i. e., the Honorable Justices of the Supreme Court of the United States.

III

Item No.

6. May 18, 1945 Receipt for Service Fees, U. S. Marshall to Grant.

The inclusion in the record on appeal of this designated and now proffered exhibit should be granted for the reason the plaintiff strongly urges its inclusion fulfills the purpose of perpetuating in the entire record designated and sent up for review **the exact state of facts** respecting official neglect or delinquency in the office of the Clerk of the District Court under the Federal Rules of Civil Procedure, Rule 4 (a),—

"Upon the filing of the complaint the clerk shall **forthwith** issue a summons and deliver it for service to the Marshal or to a person specially appointed to serve it." (Emphasis supplied)

This matter is actually a part of the record below and it is urged as such in the courts above, it being so for the purpose of review of the entire record to establish the manifest prejudice foisted, by an officer of the United States District Court, on this plaintiff in the pursuit of American Justice in the United States Courts.

The unauthorized withdrawal and/or avoidance by the clerk of the District Court of this certain matter, a part of the whole of plaintiff's DESIGNATION OF COMPLETE OFFICIALLY KNOWN RECORD AND ALL THE PROCEEDINGS AND EVIDENCE, is subject to all the opposition set forth in the second paragraph of item 4, preced-

ing, the opposition being incorporated herein by reference is made applicable hereto, to the whole, complete record, thus falsified, on appeal from the District Court, and for the further reason, in addition, the overt act completed by the said clerk, in addition to the opposition incorporated herein by reference, illegally sabotages the duty of the appellant (Rule 11, C. C. A., 7th Cir.) to file the (complete) certified Transcript of Record designated by appellant pursuant to Rule 75 (d), Federal Rules of Civil Procedure;
the said opposition beginning with the words,—

> "* * * all of which it is strongly urged has not been prompted by honest motives, in good faith, * * *"

and the opposition ending with the words,—

> "and the said violations of the United States Code of Laws is now being called to the official attention of appropriate authorities, *i. e.*, the Honorable Justices of the Supreme Court of the United States." (pp. 6 and 7)

IV

Item No.

9. May 21, 1945 Petition, to Federal Court re Service, Robb and Robb, and J. F. Robb.

Your petitioner herein, urges that the writing of the clerk of the District Court placed on Page 2 of this document, to wit,

> "The foregoing petition is denied"
>
> "F. RYAN DUFFY
> *Judge*"

be expunged, struck out, or erased for the reason the official neglect and/or official delinquency, self-envolving the said clerk by the attempt, *now for then*, to overcome the said official deficiency of due "Notice", pursuant to Rule 77 (d), Federal Rules of Civil Procedure, of the judgment of the trial judge, is a despicable and spurious representation and

a mockery of Justice by the said clerk functioning in an unauthorized judicial capacity for the fraudulent purpose of falsifying the COMPLETE OFFICIALLY KNOWN RECORD (duly known officially by this plaintiff) and/or this separate part of the whole record, by forcing out as inferior the total deficiency and/or prevailing lack of said due "Notice" and accomplishing thereby, in effect, a manifest failure of justice, resulting in this plaintiff being made voiceless, by secretly foreclosing to this plaintiff a provisional remedy or substantive right, premised on the statutory section 118 of Title 28 of the United States Code of Laws, by means of a final order accordingly entered without obligatory due procedural "Notice" thereof, (U. S. C. A., Title 28, Section 118.)

V

Item No.

10. May 28, 1945 Plaintiff's Narrative Form, of argument and opposition before the Court, May 28, 1945, on Motion of Morsell and Morsell and Arthur L. Morsell, and 11 pages of exhibits.

On this day May 28, 1945, as on another day subsequently, June 11, 1945, the United States District Court for the Eastern District of Wisconsin was without the services of an official stenographer. For that reason the narrative form (Rule 75 (c), F. R. C. P.) of evidence before the Court in opposition to the adverse party has been filed by this plaintiff for inclusion in the COMPLETE OFFICIALLY KNOWN RECORD AND ALL THE PROCEEDINGS AND EVIDENCE.

No objection was interposed by the defendants-appellees, General Motors Corporation or General Motors Sales Corporation, represented by counsel, to the inclusion in the said record of this document in narrative form.

The inclusion in the record on appeal of this designated and now, again, proffered exhibit should be granted for the reason the plaintiff, the appellant, strongly urges its inclusion fulfills the purpose of perpetuating in the entire record designated and sent up for review, by the appellant, **the exact state of facts** provided for under Rule 75 (c), Federal Rules of Civil Procedure. Otherwise, unlawful procedural discrimination would prevail.

Other opposition, incorporated herein by reference and made applicable hereto, is the references cited in paragraphs 2 and 3 of item No. 6 preceding. (pp. 7 and 8)

VI.

Item No.

14(a).	June 11, 1945	Defendants' designation, **an unsigned**, pretense of a Court Order, numbered 128.
21(a).	July 2, 1945	Defendants' designation, **an unsigned**, pretense of a Court Order, numbered 176.

Your petitioner opposes the inclusion, in the COMPLETE OFFICIALLY KNOWN RECORD, of each of these two aforesaid pretenses, falsely professed as court orders in defendants' designation, although accordingly sinisterly numbered respectively 128 and 176 and exhibited therefore as sub-normally entered, for the reason,—

1. The fatally defective pretense of a falsely professed paper by defendants' attorneys as a court order **is unsigned.** Without the signature of the trial judge the pretense could only be a fatally deficient order lacking the signature of the trial judge, the signature necessary to signify that the writing which precedes accords with the judge's wishes or intentions.

2. **In the alternative, should the opposition stated in ground one (1) aforesaid be overruled, then in deference to the opinion of this Supreme Court, your petitioner further strongly objects respectively to inclusion in the COMPLETE OFFICIALLY KNOWN RECORD of these abnormal objects classified as court orders, if any, for the reason of—**

the total intensive and ungovernable impropriety of official neglect and official delinquency premised on due "Notice" prescribed by Rule 77 (d), Federal Rules of Civil Procedure.

VII.

Item No.

26.	September 10, 1945	Plaintiff's Exhibit, of "implied" amended complaint, "implied by defendants Motion To Dismiss and To Strike.

It is respectfully urged before this court that this certain document and evidence should be rightfully reinstated in the COMPLETE OFFICIALLY KNOWN RECORD.

This document was deposited under seal with the clerk of the District Court together with copies of all other documents set forth in the plaintiff's designation.

This evidence was before the trial court during hearing in open court on September 10, 1945. (Tr. of Proceedings, Sept. 10, 1945 pp. 13, 14.)

No objection was interposed by the defendants-appellees, General Motors Corporation of General Motors Sales Corporation, represented by counsel, to the inclusion in the said record of this document.

Plaintiff offers and puts in opposition the obvious fact, of the intemperate and injudicious usurpation, **without**

right, of the functions, powers, rights and prerogatives of the authorized judiciary by the said clerk and accordingly, the false personation of falsely assuming to be vested with the powers of the judiciary by the disobliging and void external disguise of official duty under the seal of a District Court of the United States resulting in the fraudulent concealment and/or fraudulent removal of any paper designated by the plaintiff on appeal.

On the premises preceding, your petitioner strongly objects to the withdrawal from the whole record, by the clerk of the District Court for the Eastern District of Wisconsin of this certain paper deposited with the clerk under seal by your petitioner herein, the plaintiff and plaintiff-appellant. This certain paper thus in the official custody of the said clerk has been willfully and unlawfully concealed and the clerk did cause this certain paper to be fraudulently removed from the COMPLETE OFFICIALLY KNOWN RECORD and in consequence the records of the United States Courts have been falsified, and the fraud thus set forth will fraudulently with intent unlawfully injure the rights and interest of this plaintiff, your petitioner, in the review of the COMPLETE OFFICIALLY KNOWN RECORD.

Other oppositions, incorporated herein by reference and made applicable hereto, is the references cited in paragraphs 3 and 4 of item No. 6. (pp. 7 and 8)

VIII.

Item No.

29. November 19, 1945 Order for ..... "*Entry upon* Court's Opinion" by Lines, Spooner and Quarles, Attorneys for defendants General Motors Corporation and General Motors Sales Corporation, **including notice thereof.**

Your petitioner respectfully urges that the copy certified be struck from the record certified by the clerk of the District Court under the seal of said court and the proffered copy reproduced photostatically in the record for the reasons:

1. That on January 18, 1946 your petitioner, the plaintiff in this instant action in the District Court, filed with the clerk of the trial court his sworn designation of COMPLETE OFFICIALLY KNOWN RECORD including the complete contents of copies of all papers and transcriptions designated in the record, excepting only,—

   (a) item No. 44, Notification by clerk to defendants of appeal, and

   (b) item No. 46, Statements of Points.

   as set out in the plaintiff's affidavit re Certification of Service attached to the said designation.

2. Thereafter during the week of Monday, January 21, 1946 the office of the clerk of the said District Court contacted this plaintiff on several occasions attempting to explain and assert the total absence of any original papers so identified as being on file.

3. On January 26, 1946, during the morning thereof, the plaintiff filed his Statement of Points with the

clerk of the District Court, B. H. Westfahl in person.

4. On January 28, 1946, the said clerk having previously obtained, ex parte, a court order for extending the time for filing the record with the Appellate Court, **the clerk at his ultimate convenience forwarded,** by United States Mail, parcel post the record of copies, certified as "true" copies of the originals on file and remaining in the clerk's office.

5. Your petitioner's personal examination of the record, as certified, in the office of the clerk of the Appellate Court on January 30, 1946 revealed the overt act involving the most reprehensible act of substitution worthy of a judgment of condemnation, worthy of the exercise of the supervisory powers of this Supreme Court, the said overt act involving not only grave infringement of the moral sentiment of the people but also serious infringement or violation of statutory prohibitions; the said overt act of substitution of a copy of the instrument described **furnished by the defendants attorneys,** signed lightly in pencil (see copy on file) by Louis Quarles' covetous co-worker David A. Fox; the substituted copy, prepared by the defendants, to avoid the original copy of record, to alter the conclusive evidence thus taken away, all of which alteration with fraudulent intent does injure the rights and interest of this plaintiff in the review of the COMPLETE OFFICIALLY KNOWN RECORD.

Other opposition, incorporated herein by reference and applicable hereto, is the references cited in paragraphs 2 and 3 of item No. 6 preceding. (pp. 7 and 8)

IX.

Item No.

30. November 23, 1945, Plaintiff's Brief, in opposition to Defendants' Attorneys' Lines, Spooner and Quarles, Louis Quarles and David A. Fox *"Entry upon* Court's Opinion", and Certification of Service.

This document was deposited with the clerk, in person, of the District Court on November 24, 1945 during the morning thereof. Subsequently, a hearing came on in open court, November 26, 1945.

Thereafter on February 4, 1946, at the time of rechecking, in the District Court clerk's office, copies and the notations taken from the record certified by the said clerk to the Appellate Court, it was observed that on the cover of this certain document the descriptive words of the plaintiff, *e.g.*, "Order of Entry" had been taken away, altered, falsified, or otherwise avoided on the record by mutilation, obliteration, with intent to mutilate, obliterate, destroy said part of the plaintiff's document deposited with the clerk of the United States District Court and fraudulently substituted in the writing of the said clerk are the two words, set out in ink, "Entry" and "Order" thereby fraudulently changing the structure and signification of the words from

Order of Entry

to the structure and signification substituted by the clerk to

Entry of Order

Your petitioner, although strongly urging that the document be considered in the light of interpretation as reasonably placed on the words used by the plaintiff, in this, his document, nevertheless, prays that an order of this Supreme Court of the United States set forth a mandate requiring the said substituted words be placed on the copy certified to this court as a true copy of the original on file in the office of the clerk of the District Court and that a proper reference be made to the said substituted words indicating the substitution, alteration, mutilation and obliteration as the overt act of the clerk of the said District Court.

X.

Item No.

33. November 29, 1945 Affidavit and Answer to Order of Court.
(a) Affidavit.
(b) Affidavit-Extension of time.
(c) Certification of Service.

This certain instrument has been certified, under the seal of the District Court by the clerk thereof in its present form in the record on appeal as a "true" copy so certified after comparison with the originals now on file and remaining of record in said Court.

There is a substantial material deficiency existing with respect to this definite document and the said certfication thereof and the document in the form certified does not reveal the contents of the "true" analogous copy on file in the clerk's office as determined by your petitioner's personal examination of this certain document on file in the said clerk's office on February 4, 1946.

On November 26, 1945, your petitioner now, then the

plaintiff, duly served, on the defendants General Motors Corporation and General Motors Sales Corporation and duly filed with the District Court, an Application for Judgment by Default, therein said application were pleaded the necessary and proper grounds premised on existing facts entitling this plaintiff to a Judgment by Default, the said necessary and proper grounds pleaded within five separate distinct counts, each self sufficient, and to which a duly applicable affidavit was directed.

On December 3, 1945, the plaintiff was forced to accept a restricted hearing in open court in the United States District Court, Milwaukee, Wisconsin. The deforcement constraining this plaintiff was impelled, driven along forward, and cast with impropriety on the plaintiff by the undue influence of the trial judge **and obviously**, not in the interest of justice or, on grounds of relief to which the said defendants were entitled, nevertheless the denial of the definitive, statutory, substantive right of Due Process of Law and Equal Protection of the Laws was foisted upon this plaintiff-petitioner because the plaintiff had exercised an inalienable civil right in the said United States District Court only to receive from the trial judge thereof oppression and intimidation of his civil rights to impede the due course of justice and the denial of equal protection of the laws and to all of which the trial judge applied his talents to do harm and injure the plaintiff's said civil rights and the fair determination of the plaintiff's rights to his verified claim for relief.

The illegal consequence during the aforesaid restrained hearing, of plaintiff's applications for Judgment by Default against defendants General Motors Corporation and its wholly owned subsidiary General Motors Sales Corporation represented at said hearing by one David A. Fox, was the pretentious courageous, magnanimous, enterprising interposition, **without "Notice"**, of the brave, gallant,

valorous spirit in person, of one Louis Quarles, a second (2nd) representative in court for the said defendants, who, thus inopportunely displayed despotic haughty indifference to fairness, **yet**, assumingly disdaining self professedly the implied dishonor, injustice, meanness or impropriety of others notwithstanding he, then, formed a two to one block unreasonably solicitous in high pressuring the trial judge, their social compact fraternity colleague.

Thus, the said enterprising interposition, **without "Notice"**, of the said one, Louis Quarles was for the purpose of submitting his own personal oratory, otherwise a motion **nonprivileged** at that time under the Federal Rules of Civil Procedure, to effect the withdrawal by imitable order of the Court of plaintiff's affidavit and answer to the Court filed with Madam D. M. Rynders, Secretary to the trial judge at 9:30 A. M., on the 29th day of November, 1945, on which affidavit, the one, Louis Quarles, said in open court,—

> "**I have** underscored certain parts in red." (Tr. of proceedings, Dec. 3, 1945, page 15).

The final result of this shrinking back from the inherently self confessedly contradiction of the otherwise professed propriety due the court, from one presumptively reputable yet seemingly specially trained and long skilled in the fine choice of contemptible mendacious language that only **certain ones** skilled in the law would use, was an order prepared for the trial judge by the said defendants' attorneys and the verbatim adoption by the trial judge of the said order prepared by the defendants' attorneys, to-wit,—

ORDER.

Upon suggestion made in open Court December 3, 1945, by Louis Quarles, attorney for defendants above named, plaintiff, Roy Grant, Jr., being present appearing pro per, that plaintiff withdraw his Affidavit filed November 29, 1945 because of alleged scandalous matter appearing therein, and the Court's attention having been directed to such matter the same being **indicated by the reporter's markings**, upon said Affidavit of said Roy Grant, Jr., filed in this matter November 29, 1945;

IT IS ORDERED on the motion of the Court that the matter, **indicated by the reporter's markings** upon said Affidavit filed by said Roy Grant, Jr., November 29, 1945, be and the same is hereby stricken as scandalous.

(Emphasis supplied)

/S/ F. Ryan Duffy,
United States District Judge.

Dated: December 4, 1945.

5:vp

On January 30, 1946, this said instrument was duly examined in the office of the Clerk of the Circuit Court of Appeals for the Seventh Circuit, Chicago, Illinois, and the examination revealed the copy of record, certified as a "true" copy by the clerk of the trial court, under the seal of that court, after comparison with the originals now on file and remaining of record, was a false, spurious, deceptive copy as certified by the clerk under the seal of the trial court **because** *of the lack of any red underlines* and accordingly therefore,—

(a) the clerk of the trial court using the seal of the said District Court has deliberately refused to certify a true record and aided or abetted in the making false the records of the United States Courts by encouraging, by instigating, and by

countenancing the certification, over his name and under the seal of the District Court, of a document of record in this instant action which does not materially compare with the original now on file and remaining in his office, and

(b) the said clerk under said certification and seal has actually certified a false record

(c) the said officer of the United States Courts, the clerk of the said District Court, thereby, has knowingly made false acknowledgment, certificate, or statement concerning the taking of an oath or affirmation by himself, the said clerk, with respect to record on appeal, concerning which an oath or affirmation is required by law or regulation made in pursuance of law.

On the premises foregoing and the overt act involving a most reprehensible act of avoidance concerning a document under seal of a United States Court, by the clerk thereof, **as known officially**, and again, the injudicious said overt act worthy of a judgment of condemnation, worthy of the supervisory powers of this Supreme Court of the United States, the said overt act altering the conclusive evidence thus fraudulently taken away with the fraudulent intent to injure the rights and interest of this plaintiff in the review of the COMPLETE OFFICIALLY KNOWN RECORD,—

IN CONSIDERATION THEREOF, your petitioner prays that an order of this Supreme Court of the United States issue and set forth a mandate demanding forthwith from the clerk of the trial court the underlined portions set out in red on the original copy by one, Louis Quarles, be made known to the Honorable Clerk of this Supreme Court, and that the said red underlined portions be ordered set out with similarity, in the printed Transcript of Record.

IN THE ALTERNATIVE, to facilitate correction of

the record, your petitioner respectively suggests that the analogous copy, within the sheaf of exhibits, be rightfully substituted for the copy of record certified by the clerk of the District Court. The red lines underscoring the certain parts of the said document were carefully noted in the office of the clerk on February 4, 1946 on examination of the original copy of record in the said clerk's office and thereafter have been set out on the copy **now** submitted.

Other opposition, incorporated herein by reference and made applicable hereto, is the references cited in paragraphs 2 and 3 of item No. 6 preceding. (pp. 7 and 8)

XI.

Item No.

34. November 29, 1945 Order of ..... Defendants' Attorneys' Lines, Spooner and Quarles, Louis Quarles and David A. Fox "*Entry upon* Court's Opinion", this order **signed** by Judge F. Ryan Duffy.

In connection with this document your petitioner can not too strongly yet respectively urge, that in the interests of justice together with the full protection of your petitioner's civil rights before this Supreme Court, the court of last resort, it is wholly necessary, for abundant simplicity,

(a) that this described document be set forth in the printed Transcript of Record as an actual offset photostatic reproduction of all the pages therein, and without the reprehensible destruction, obliteration, and mutilation of the top of page "one" of said document **whereon** at the top is the clear

impression by printing of the **defendants**, General Motors Corporation and General Motors Sales Corporation **attorneys**, to wit:

LINES, SPOONER & QUARLES,
ATTORNEYS AT LAW.

Your petitioner's purpose, for strongly urging the actual offset photostatic reproduction, of the whole of this said document in the original "true" form, is the **superior recording** of the abundantly clear and preponderance of the elements of conclusive evidence of fraud and collusion, practiced by the defendants attorneys to defraud this plaintiff and obtain an object forbidden by law, in conjunction with the vitiating fatal omission of truly honest and upright official duty of the trial judge thus aiding the defendants attorneys to defraud this plaintiff, to all of which, the clerk of the trial court, in certifying a mutilated document as a "true" copy of the original, did further aid and abet the fraud and collusion of the defendants attorneys and the trial judge to defraud this plaintiff and deny this plaintiff *equal protection of the laws.*

The simplification, of clearly presenting the issues the plaintiff will bring before this Supreme Court for review, would abate and/or diminish, and the understanding be made slower, by taking away by printing otherwise in any other form and anything less than the full offset photostatic reproduction of the "true" original copy of record **as is** in the trial court, from which said original copy the analogous proffered photostatic copy within the sheaf of documents was made and which is incorporated by reference and made a part herein and so urged as the "true" substitute of the original, originally on file in the office of the clerk of the trial court.

Other opposition, incorporated herein by reference and made applicable hereto, is the references cited in paragraphs 2 and 3 of item No. 6 preceding. (pp. 7 and 8)

3.

Firmly and permanently involved, also, in the said overt reprehensible act of avoidance in this plaintiff's record on appeal or review as certified by the said clerk under the seal of the District Court for the Eastern District of Wisconsin are the infringements or violations of the prohibitions set forth in the criminal statutes of the United States Code of Laws, to wit:

The criminal violations set forth are premised on the conclusive facts,—

(a) that under date of January 28, 1946 the clerk of the said District Court of the United States placed or caused to be placed in the United States Mail a letter addressed to this plaintiff, Roy Grant, Jr., wherein said letter the said clerk made a demand for the amount of $45.05 as the fee of said clerk for making the record (on appeal) as per bill enclosed with said letter;

(b) that on January 28, 1946 the plaintiff appeared in the office of the said clerk and at that time was presented a duplicate copy of the bill set forth under item "a" preceding to which said bill an extra additional charge was added, *e.g.*

Parcel Post $0.15 (15¢)

to reimburse the said clerk for the expense of forwarding via parcel post, United States Mail, the record on appeal, of writings of pleadings, judgment and other papers in this instant action, certified by the said clerk to the Circuit Court of Appeals for the Seventh Circuit, Chicago 10, Illinois. The total amount of forty-five dollars and twenty cents ($45.20) was paid then, forthwith.

CRIMINAL VIOLATIONS.

1. (Criminal Code, section 215.)

The clerk of the said District Court of the United States, using the official office of the said clerk of the District Court of the United States and the Post Office Department of the United States, with intentional efforts to despoil the said plaintiff's record on appeal, did certify to a false record under the seal of the United States District Court for the Eastern District of Wisconsin, and thus, the said clerk having devised or intending to devise a scheme or artifice to defraud this plaintiff and the Honorable Justices of the High Courts of the United States as Judicial officials of the United States, by means of a spurious record on appeal, did obtain money from this plaintiff to the amount of Forty-five dollars and five cents ($45.05), in addition to fifteen cents ($0.15) for a total amount of Forty-five dollars and twenty cents ($45.20) by means of false or fraudulent pretenses, representations, of a certified false record on appeal as originally furnished, sent or forwarded to the said Appellate Court and subsequently the said certified record sent or forwarded to this Supreme Court of the United States, said false certified record a spurious article on which the said clerk did demand and obtain money from this plaintiff for the total amount of Forty-five dollars and twenty cents ($45.20) by and through his (clerk's) letter, identified aforesaid as dated January 28, 1946, which the said clerk for the purpose of executing such said scheme or artifice did place or cause to be placed, the said letter signed in the handwriting of the said clerk, addressed to this plaintiff residing within the United States, in an authorized depository for mail matter, to be sent or forwarded or delivered by the post office establishment of the United States, and thus knowingly did cause the said letter to be delivered by mail according to the

direction thereon and at the place at which it was directed by the said clerk to be delivered to this plaintiff to whom it was addressed.

2. (Criminal Code, section 221.)

The clerk of the said District Court of the United States, on January 28, 1946 did cause the heretofore described copies, of writings on file in his official office in this instant action together with his writing of certification including his signature thereto, to be enclosed in a wrapper and thereafter the said clerk did cause the package containing the said writings of record to be deposited with the Post Office Establishment of the United States in the Federal Building, Milwaukee, Wisconsin, and did cause the said package to be admitted to the mails as fourth (4th) class mail for which a parcel post fee of only 15¢ was paid for parcel post stamps affixed thereto said package weighing approximately 4 pounds (lbs.) and 8 ounces, as the "true" higher class of the inclosed matter within said package was knowingly concealed by the said Clerk, or his duly accredited agent, from the established United States Postal authorities on January 28, 1946, when the said clerk deposited or caused the said inclosed matter, for which a higher first class rate is duly prescribed, to be deposited for conveyance by mail at the lower class parcel post rate, the said package addressed for delivery to Circuit Court of Appeals for the Seventh Circuit, Chicago 10, Illinois.

Other opposition, incorporated herein by reference and made applicable hereto, is the references cited in paragraph 2 of item No. 4 preceding. (pp. 6 and 7)

CONCLUSION.

It is submitted that each of the eleven objections, under section 2, and the criminal violations set forth under section 3 hereinbefore with respect to the criminal statutes of the United States Code of Laws, presented herein are unlawful determinations by persons in their official capacity as duly authorized officials or officers of the United States Courts who have successfully worked, heretofore, their malice on this plaintiff in the United States Courts, in clear conflict with the applicable principles under American Justice and promulgated procedure under the Federal Rules of Civil Procedure, for the purpose of ultimately defeating your petitioner's full statutory redress for violations of this plaintiff's substantive civil rights which were breached by the said defendants herein.

It is further submitted that the determination of the validity of the eleven objections of excesses of usurped jurisdiction and criminal abuses hereinbefore set forth is of the greatest importance to American Jurisprudence in connection with the proper and appropriate business and/or duty of this Supreme Court of the United States to interpret and to render to any and/or every person his just due.

The questions are substantial and until, the said questions and/or propositions, now expressing fraudulent practice in the United States Courts, are decided by this Supreme Court, your petitioner cannot know what ultimate facts, either, true or fraudulent, will receive positive acceptance by the courts for the purpose of the case and therefore otherwise met subsequently, regardless, of the negative, vitiating, fraudulent interposition, of falsity professed as truth, transcending truth.

Wherefore, your petitioner, Roy Grant, Jr., prays that a mandate be issued out of and under the seal of this superior Honorable Court, directed to the Honorable Charles

Elmore Cropley, Clerk of this Court, commanding the proper inclusion in the printed Transcript of Record in the cause, on the docket of the United States District Court for the Eastern District of Wisconsin, Docket No. 2295, ROY GRANT, JR., doing business as NO SLEET WINDSHIELD HEATER COMPANY, Plaintiff, vs. GENERAL MOTORS CORPORATION, a foreign corporation, GENERAL MOTORS SALES CORPORATION, a dissolved foreign corporation, WHEELER, WHEELER and WHEELER, a firm, and WARREN G. WHEELER and S. L. WHEELER, LECHER, MICHAEL, SPOHN and BEST, a firm, and JOHN W. MICHAEL and MILES HENNINGER, MORSELL and MORSELL, a firm, and ARTHUR L. MORSELL, ROBB and ROBB, a firm, and J. F. ROBB, ELWIN A. ANDRUS, Defendants, the reproduction of certain patents hereinbefore set forth in section one, and the Order to further command, the inclusion by substitution or by reinstatement of the exhibits incorporated herein and hereinbefore set forth in,—

Section 2.

Items, numbered, 2, 4, 6, 10, 26, 30, 33, and

expunge from the record,—

Items, numbered, 9, ~~14, 15, and~~ 14(a), 21(a), and

reproduce by offset photostatic reproduction as set forth Items, numbered 29 and the Court Order therein dated December 4, 1945 and item 34, and

that your petitioner, and the people of the United States, have such other and further relief in the premises as to this Honorable Court may seeem meet and just, including costs.

I have the honor to remain,

Respectfully yours,
ROY GRANT, JR.,
Petitioner.

Mail Address:
P. O. Box 1695,
Milwaukee 1, Wisconsin.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1945.

Docket No. .....

ROY GRANT, JR.,
DOING BUSINESS AS
NO SLEET WINDSHIELD HEATER COMPANY,
Plaintiff-Appellant,
Petitioner,

vs.

GENERAL MOTORS CORPORATION,
A FOREIGN CORPORATION, ET AL.,
Defendants-Appellees.

STATE OF WISCONSIN, } ss.
MILWAUKEE COUNTY. }

AFFIDAVIT, CERTIFICATION OF GOOD FAITH, VERIFICATION.

Roy Grant, Jr., petitioner herein, being first duly sworn on oath, deposes and says that in the above entitled cause he knows the contents of the foregoing Petition to Correct Diminution of Record, said petition incorporated herein by reference and made duly applicable hereto, and that the same is true and correct except as to those matters suggested or on information and belief, and as to those matters he believes them to be true.

It is further certified, hereby, that the said foregoing petition is presented in good faith and not for the purpose of delay.

ROY GRANT, JR.,
Petitioner.

Subscribed and sworn to before me this 2 day of July, 1946.

J. M. SCHERWENKA,
(SEAL) *Notary Public, Milwaukee County, Wisconsin.*

My Commission expires; April 11, 1948.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 378

ROY GRANT JR. doing business as NO SLEET WINDSHIELD HEATER COMPANY,

Petitioner,

vs.

GENERAL MOTORS CORPORATION,

Respondent.

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION ENTITLED PETITION TO CORRECT DIMINUTION OF RECORD

DRURY W. COOPER,
233 Broadway,
New York 7, N. Y.

LOUIS QUARLES,
411 East Mason Street,
Milwaukee, Wisconsin,
Counsel for Respondent.

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IN THE

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One cannot glean from a careful examination of the petition what is the basis for it or what purpose it would serve. Indeed, the petition is not understandable. It would appear from it that all who have had any mission in connection with the action—the District Court, its clerk and counsel—are out of step with petitioner. Intemperate language is employed and scandalous statements are embodied in the petition.

No copy of any record was served with the petition.

In view of the nature of the petition, it is deemed to be advisable to relate the nature of the action, proceedings therein and its status.

Nature of Action, Proceedings Therein and Its Status

The complaint, filed on May 14, 1945, is a long, rambling and in most part unintelligible paper. It may be said to state, among other things, a claim for alleged infringement of a patent.

In addition to respondent, petitioner named as defendants General Motors Sales Corporation—admitted to be a dissolved corporation—four law firms and certain individual attorneys. Violation of the Anti-Trust Laws and the United States Criminal Code are referred to. Attorneys named as defendants are charged to have violated the Rules of Practice of the United States Patent Office, "the Compiled Laws of Michigan 1929" and "Wisconsin Statutes".

The action was dismissed as to the individual defendants on application to the District Court.

A motion by respondent to dismiss the complaint was tendered. The District Court accorded opportunity to petitioner to file an amended complaint stating a claim for patent infringement which was served on or about July 23, 1945.

A motion with respect to the amended complaint was made by respondent and General Motors Sales Corporation. An order was sought dismissing the amended complaint as to General Motors Sales Corporation which was dissolved in January 2, 1942, to dismiss a portion of the amended complaint on the ground that it does not state a cause of action under the Anti-Trust Laws and for other relief.

The District Court of the United States for the Eastern District of Wisconsin heard and determined said motion. It filed an opinion thereon on November 13, 1945, and an order conforming thereto on November 29, 1945. The

District Court ruled that the amended complaint be dismissed as to General Motors Sales Corporation for the reason that "no attempt to state a claim" against it on which "relief could be granted" is set forth. Provisions of the amended complaint as to the Anti-Trust Laws were ordered stricken. Also ordered stricken was a reference "to a number of patents which appear on page 6 of the complaint" for the reason that "they can have no significance other than referring to the prior art, and while they might be matters of defense it is not perceived that they have any proper place in the complaint".

Provisions of paragraph 11 of the amended complaint which "seem to have no connection with the plaintiff's claim and relate to dealings between the plaintiff and various attorneys and representatives", was also ordered stricken.

A statement of paragraph 12 of the amended complaint from which "it is difficult to understand just what plaintiff is trying to allege in the nature of a claim" was also ordered stricken.

The opinion of the District Court points out that the complaint alleges that an attorney employed by respondent "swore to an oath" before another employee of respondent and that "plaintiff apparently conceives the oath to be false and in violation of the various Michigan statutes". This allegation was also ordered stricken.

Thereafter petitioner tendered a motion for judgment by default. The motion was baseless and it was denied on December 3, 1945. Respondent was directed to file its answer within twenty days.

On the following day, December 4, 1945, on the motion of the District Court, portions of the affidavit of petitioner, which was presented in support of said motion for judgment by default, were "stricken as scandalous".

Respondent's answer was served on December 15, 1945. It denies infringement and presents defenses as to the claim of infringement upon United States patent No. 1,630,921 granted on May 31, 1927 for Windshield Cleaner on the application of Jesse C. Birely. The Birely patent had expired about a year before the action was instituted. Petitioner alleges that he acquired title to this Birely patent on November 19, 1934. The issues on the claim under the expired Birely patent have not been tried.

An appeal was taken by petitioner to the United States Circuit Court of Appeals for the Seventh Circuit from portions of the said orders of November 29, 1945, December 3, 1945 and December 4, 1945, which struck from the amended complaint the allegations referred to above, directed dismissal of the complaint as to General Motors Sales Corporation, struck out the scandalous portions of the petitioner's affidavit and which directed filing of the answer of respondent to the remaining portions of the amended complaint which purport to state a claim for alleged patent infringement.

The action is pending and untried as to respondent as to the claim for alleged patent infringement upon which issue is joined.

The appeal record: Petitioner designated what he desired to have included in the record on his said appeal. Respondent filed its designation of additional portions of the record and proceedings to be included in the record on said appeal, inclusive of its answer to the patent infringement claim of the amended complaint. The appeal record is principally of the selection of petitioner.

Motion to dismiss appeal: Respondent moved in the Court of Appeals to dismiss the appeal of petitioner from the said interlocutory orders on the ground that said orders are not final but interlocutory, and not appealable. No injunction was granted or denied. The claim for alleged patent infringement was pending and not determined.

Hohorst v. *Hamburg-American Packet Co. et al.*, 148 U. S. 262 at p. 264.

By way of response to the motion to dismiss his appeal, petitioner presented to the Court of Appeals two "emergency" petitions. One was to correct the record. No particular in which the record required correction was set forth—just a bald conclusion. The other "emergency" petition was to void the motion of respondent to dismiss the appeal. Each "emergency" petition was denied.

On March 12, 1946, the Court of Appeals ordered the appeal of petitioner dismissed.

The Petition

The instant petition is entitled "Petition to Correct Diminution of Record". The petition is not related to any proceeding in this Court or in aid of any petition for writ of certiorari which is before this Court.

The Petition Should Be Denied

The petition should be denied for the reasons (I) that it is not a part of any proper proceeding in this Court and it is not in aid of any proceeding in this Court, (II) that no purpose can be served by the petition, for the record which was before the Court of Appeals may not be altered, (III) that it does not comply with the rules of this Court and (IV) that it contains scandalous matter and therefore should be stricken from the files of this Court.

We shall treat briefly with each of said points.

POINTS AND ARGUMENT

I.

The petition should be denied for the reason that it is not in any proper proceeding in this Court and it is not in aid of any proceeding in this Court.

In full effect petitioner is asking this Court to tailor the record which was before the Court of Appeals and without purpose.

The record on appeal of the petitioner to the Court of Appeals was of his selection. Respondent designated certain items to be included therein—its answer to the amended complaint joining issue as to the charge of alleged patent infringement and other papers.

A petition to this Court for writ of certiorari must be on the record which was before the Court of Appeal. This Court does not consider matters dehors the record before a Court of Appeals on petitions for writs of certiorari.

Petitioner seeks (petition, p. 2) to have the Clerk of this Court add to the record copies of patents which he identifies but which were not before the Court of Appeals and for the "substitution of exhibits or true copies contained in the sheaf of documents, accompanying this petition to this Supreme Court" (petition, p. 3).

It is idle to deal further with the instant petition as to the instances in which a "substitution" is desired. The law is clear that the record before the Court of Appeals may not be altered. The record in the Court of Appeals is of the making of petitioner. Any correction in the record had to be effected in the District Court.

The Rules of Civil Procedure for the District Courts of the United States control the settlement of any record. Rule 75(h) provides that

> "if any difference arises as to whether the record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record made to conform to the truth."

Any "correction" to the record had to be made in the District Court. No application by petitioner was made to that Court. No correction was necessary.

This point amply justifies the denial of the petition.

II.

The petition would not serve any purpose, for the record before the Court of Appeals may not be altered.

The record on any petition to this Court must be upon the record which was before a Court of Appeals on which it made its determination. One may not add to or subtract from such record which was before a lower court.

In *Grame* v. *Mutual Assurance Society of Virginia,* 154 U. S. 676, this Court said when it denied motions for writs of certiorari:

> "A petition for a rehearing, filed in the court below after judgment, which has been refused, is no part of the record to be returned here with a writ of error for a review of the judgment. *Steines* v. *Franklin County,* 14 Wall. 21."

In *Maxwell Land-Grant Case,* 122 U. S. 365, this Court had before it petitions for rehearing. In its opinion it said (p. 375):

> "There is a reference in the part of the petition for a rehearing which was prepared in the office of the Commissioner of the General Land Office, to the existence of new and material evidence touching the fraudulent character of the grant, which we must suppose to have been addressed to the Secretary of the Interior and the Attorney General as reasons for obtaining a new trial if they could, and not addressed to this court as any legal foundation for reconsidering its decision. *If this court should grant a rehearing it could only be had, according to the uniform course of the court during its whole existence, upon the record now before the court as it came from the Circuit Court for the District of Colorado.*" (Italics ours.)

The record cannot be altered. Consequently the instant petition can serve no purpose and should be denied on this ground.

III.

The petition does not comply with the Rule 17 of this Court. This Rule provides that "*no certiorari* to correct diminution of the record" shall be awarded unless a printed motion therefor shall be made and the facts on which the same is founded shall be shown by affidavit. The "affidavit" comprised in the petition (p. 29) does not comply with the requirement of Rule 17. The petition is incorporated in the affidavit by reference but the petition made part of the affidavit is replete with conclusions, innuendoes, improper charges and scandalous statements. There are no substantial facts set forth therein.

Rule 17 provides that such motion shall be made on a motion day "not later than the first motion day after the expiration of sixty days from the printing of the record, unless for special cause shown the court receives the mo-

tion at a later time". The record is not before this Court. No record was served with the petition. A record (not printed) was before the Court of Appeals. Since the record has not been printed, no motion with respect thereto is sanctioned by Rule 17 of this Court.

This is another ground which merits denial of the petition.

IV.

The petition, because of the embodiment therein of scandalous matter should be stricken from the files of this Court.

In the petition (p. 3) "illegal misrepresentations" and "official neglect" are attributed to someone. Further (petition, p. 3) it is said that "certification by the clerk of the trial court" was "presumptively official, notwithstanding otherwise the obvious exhibition of capricious, tyrannical, self-executing villainies" showing "imperfect discharge of official obligations" and "certification of a false record" (petition, p. 4).

The trial judge does not escape the venom of petitioner, for he stated (petition, p. 17) that the "trial judge applied his talents to do harm and injure the plaintiff's said civil rights and the fair determination of the plaintiff's rights to his verified claim of relief".

Counsel are subjected to the vituperations of petitioner (petition, p. 18). They are charged with having "displayed despotic haughty indifferences to fairness" and "formed a two to one block unreasonably solicitous in high pressuring the trial judge, their social compact fraternity colleague."

When dealing with "criminal violations" (petition, p. 24) the clerk of the District Court is stated to have used his official office "with intentional efforts to despoil the

said plaintiff's record on appeal" and certified "to a false record" under the seal of the District Court.

The scandalous matter with which the petition is replete is ground for striking the petition from the files of this Court.

In *Green* v. *Elbert*, 137 U. S. 615, 624, this Court said when striking from the files of this Court the brief of the plaintiff:

> "We regret that we find ourselves compelled to add something further. The printed argument of plaintiff in error contains many allegations wholly aside from the charges made in his complaint, and bearing reproachfully upon the moral character of individuals, which are clearly impertinent and scandalous, and unfit to be submitted to the court. It is our duty to keep our records clean and free from scandal."

This ground alone is justification for the denial of the petition.

CONCLUSION

It is submitted that the petition is without basis in fact or in law and that it should be denied.

DRURY W. COOPER,
LOUIS QUARLES,
Counsel for Respondent.

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TABLE OF CASES

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

NO. 378

ROY GRANT, JR., doing business as
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vs.

GENERAL MOTORS CORPORATION, et al.,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Because of the length and discursive character of the Alleged "Summary Statement of Matters Involved" (extending from page 3 through page 40 of Petitioner's Petition) and similar complexity of "Questions Presented," extending from page 41 through page 51, Respondents submit a short statement of the nature of the action and the orders the review of which is requested.

In limine, no record has been printed, no copy of the typewritten record has been served on counsel for Respondents, and Petitioner's brief does not refer to the official record, nor is there any way in which Respondents' counsel can refer thereto because they are entirely unadvised as to the content or pagination thereof. Petitioner has seen fit to serve on one of Respondents' counsel

a purported Transcript of Record, which was never certified by any court official and contains a mass of material foreign to the issues and which is not of record.* Because of this situation reference will *ex necessitate* be made thereto, although it obviously can have no standing whatever.

STATEMENT OF FACTS

Petitioner commenced an action at law in the District Court of the United States for the Eastern District of Wisconsin on May 12, 1945, claiming *inter alia* that Respondent General Motors Corporation infringed the expired Birely Patent No. 1,630,921 for windshield cleaners and joining various other defendants, including several law firms and individual attorneys who were charged with negligence, dereliction of duty, etc., in refusing to represent Petitioner herein, all in no wise connected with the aforesaid cause of action for patent infringement. General Motors Sales Corporation was likewise made a party. There were other allegations as to alleged violation of the anti-trust laws of the United States (no special damage being averred), and violation of the criminal laws of the State of Michigan, etc.

The law firms and individual defendants moved to dismiss on the ground that there was no diversity of citizenship as to them and on various other grounds, and these motions were granted and no appeal was taken therefrom (Tr. 172). Counsel for Respondent General Motors Sales Corporation moved for dismissal as to it on the ground that that corporation had been dissolved more than three years prior to the commencement of the

* One copy each of the Petition and "Transcript of Record" was served on Louis Quarles, Counsel for Respondent. Request for service of additional copies on Drury W. Cooper and David A. Fox, also Counsel for Respondent, has been ignored by petitioner.

action. Both corporations moved to dismiss the complaint for failure to state a claim upon which relief could be granted or in the alternative to strike certain portions of the complaint. On July 2, 1945 the Court denied the motion of the corporate defendants to dismiss, granted leave to plaintiff to amend the complaint and reserved consideration of the remainder of the motion subject to the filing of said amended complaint.

Petitioner then filed an amended complaint (Tr. 81-92). The two corporate defendants again moved with respect to the amended complaint to dismiss Count I thereof as to General Motors Sales Corporation on the ground that none of the acts complained of therein were charged against it (Tr. 93-94); and to dismiss Count II as to both General Motors Corporation and General Motors Sales Corporation on the ground that this Count did not state facts for which a remedy was given under the Anti-Trust Laws since no special damage was alleged (Tr. 94). Certain other parts of the amended complaint were sought to be stricken (Tr. 94-95).

On November 13, 1945 the District Court filed its opinion on this motion in large part sustaining it (Tr. 112-114). On November 29, 1945 the Court entered an order in accordance with its opinion (Tr. 144-146). This order dismissed Count I of the amended complaint as to General Motors Sales Corporation because no cause of action for patent infringement was charged against it. It dismissed all of Count II of the amended complaint against both corporate defendants because it did not state facts upon which any relief could be granted under the Anti-Trust Laws. The order also struck certain parts of the complaint which were either unintelli-

gible or foreign to any facts upon which any relief could be granted.

In an effort to deter entrance of the above order Petitioner filed on November 29, 1945 a long, rambling affidavit containing much irrelevant and scandalous matter, and on December 4, 1945 the Court on its own motion entered an order directing "that the matter indicated by the reporter's markings upon (the) affidavit filed by * * * Roy Grant, Jr., November 29, 1945, be and the same is hereby stricken as scandalous". (Tr. 151, 152). The affidavit containing the scandalous matter is found at Tr. 131-142, but the underlining designating the stricken matter is not shown so that the Court's ruling cannot be ascertained therefrom.

On November 26, 1945 Petitioner applied for a judgment by default (Tr. 122-130). This application was denied by order dated December 4, 1945 (Tr. 150). General Motors Corporation was never in default (Tr. 146-148).

On December 15, 1945, within the time provided therefor by order of the District Court, General Motors Corporation filed its answer to those parts of the amended complaint which were not stricken, denying infringement of the Birely patent in suit and setting up affirmative defenses thereto (Tr. 173-177). *There was thus left before the District Court a full charge of patent infringement against General Motors Corporation which was then at issue and is now awaiting trial.*

Petitioner appealed to the United States Circuit Court of Appeals for the Seventh Circuit (Tr. 152) with respect to three orders, namely: (1) the order of November 29, 1945 (Tr. 144-6), which dismissed Count I of the

amended complaint as to General Motors Sales Corporation, dismissed the purported Anti-Trust charge of Count II as against both defendants, and struck parts of the amended complaint; (2) the order of December 3, 1945 (Tr. 150) which denied Petitioner's application for judgment by default; and (3) the order of December 4, 1945 (Tr. 151-2) which struck the scandalous matter from the affidavit of the petitioner.

After the petitioner's appeal was docketed, and on February 6, 1946, the corporate defendants moved to dismiss the appeal (Tr. 189-91) on the ground that the action was still pending and untried as against the defendant General Motors Corporation and that the orders appealed from were not final judgments but merely interlocutory orders and not appealable. On March 12, 1946 the United States Court of Appeals for the Seventh Circuit dismissed Petitioner's appeal in the following language (Tr. 230):

> "It is ordered and adjudged by the Court that this appeal be, and the same is hereby dismissed, for the reason that the orders appealed from are interlocutory and not final."

SUMMARY OF ARGUMENT

The Petition for Writ of Certiorari shoud be denied because:

1. The Petition and Brief do not conform with Rule 38. Among other things, the Petition (a) is "not accompanied by a certified transcript of the record in the case" as required by Rule 38 (1) of this Court; (b) the purported printed transcript of record is not certified and violates paragraph 8 of Rule 38; (c) the petition does not contain "a summary and short statement of the matter

involved" as required by Rule 38 (2) of this Court; (d) does not set forth "the questions presented" as required by Rule 38 (2) of this Court, in an intelligible form; (e) does not set forth "the reasons relied on for the allowance of the writ" as required by Rule 38 (2) of this Court in an understandable manner; (f) it makes no references to the official record; and (g) the supporting brief is not "direct and concise" as required by Rule 38 (2) of this Court; for any one of which reasons the Petition should be denied.

2. The orders of November 29, December 3 and 4, 1945 are interlocutory, not final, and do not grant or deny an injunction and therefore no appeal lies from them.

3. The Petition further should be stricken from the files of this Court because of the embodiment therein of scandalous matter.

ARGUMENT

I.

THE PETITION AND BRIEF DO NOT CONFORM WITH THE RULE.

Supreme Court Rule 38 is clear and neither the Petition nor the Brief comply therewith.

(a) The Petition Is Not "Accompanied by a Certified Transcript of the Record in the Case."

No copy of the typewritten transcript of the record has been served upon counsel for Respondent. In its place a printed booklet designated "Transcript of Record" prepared by Petitioner, containing briefs and other matter *dehors* the record, and showing in no wise any certifica-

tion of the original by any authorized official, was served, like the Petition, on *one* only of Respondent's counsel.

On pages 256-7 of the purported record it appears that such purported record was certified by the Petitioner, no such certification of a record being authorized by law. No other certification appears. This is in clear violation of Rule 38(1) of this Court, which provides that:

> "A petition for review on writ of certiorari of a decision of * * * a circuit court of appeals * * * shall be accompanied by a certified transcript of the record in the case, including the proceedings in the court to which the writ is asked to be directed."

(b) The Purported Record, Which the Petitioner Tried to Certify, is not Only Not an Official Record, But Violates Paragraph 8 of Rule 38 by Including a Mass of Material Not Essential to the Consideration of the Questions Presented.

Without laboring the point, we call attention to but a few of the inaccuracies and additions to the record which are not proper parts thereof:

Narrative of Hearing, re. Morsell, et al (Tr. 22-24). This is not a reporter's transcript of any hearing on May 28, 1945. It appears to have been made up by the Petitioner, for it is noted that the following appears near the middle of page 22

> "*Proceedings not officially stenographically reported on May 28, 1945.
>
> "official stenographer pursuant to Rule 80(b) F.R.C.P., not visible *propria persona*)".

Pages 16-32 and 43-71 have to do only with proceedings, including numerous memoranda, whereby the law firms and individual lawyers moved to dismiss the complaint as to them. All of these motions were granted (Tr., 172) and Petitioner did not appeal to the Court of Appeals with respect to them (Tr., 152). These proceedings have no place in the record.

The following pages of the record contain nothing but briefs by counsel for the Respondents or by Petitioner and are not a part of the record: 16-17, 29-30, 31-32, 35-42, 47-52, 57-60, 67-71, 73-80, 95-112, 117-121, 122-130, 147-149, 191-194, 199-208.

(c) The Petition Does Not Contain a "Summary and Short Statement of the Matter Involved."

Under the above heading Petitioner's statement commences on page 3 of his Petition and ends on page 39 thereof. It is neither summary nor short and is full of rambling, incoherent statements which do not satisfy the first provision of Rule 38 of this Court.

(d) The Petition Does Not Set Forth "The Questions Presented" as Required by Rule 39 (2) of This Court, in an Intelligible Form.

The questions presented are twenty-six in number and are found at pages 41-51 of the Petition. Each consists of a long conglomeration of words often without a main verb, and often unintelligible. With this type of presentation it is not seen how the court can consider the questions under the rule.

(e) The Petition Does Not Set Forth "The Reasons Relied on For the Allowance of the Writ" as Required by Rule 38 (2) of This Court.

An examination of Petitioner's Brief under this heading, pages 51-54, shows their utter lack of substance. They are also vague and indefinite, and with difficulty understandable.

(f) No References Are Made to the Official Typewritten Record.

The supporting Brief does not refer to the official record, and this notwithstanding the fact that attention was specifically called to this requirement by the Clerk (Tr., 255-6).

(g) The Supporting Brief Is Not "Direct and Concise" as Required by Rule 38 (2) of This Court.

Here again the Brief is so difficultly worded that an understanding thereof is in part impossible.

It is the well settled policy of this Court that a failure to comply with the requirements of Rule 38 is a sufficient reason for denying a petition for certiorari. See *United States v. Rimer,* 220 U.S. 547; *Furness, Withy & Co. v. Yang Tsze Insurance Assn.,* 242 U.S. 430; *Houston Oil Co. v. Goodrich,* 245 U.S. 440; *Layne & Bowler Corporation v. Western Well Works,* 261 U.S. 387, 392; *Magnum Import Co. v. Coty,* 262 U.S. 159, 163; *Southern Power Co. v. North Carolina Public Service Co.,* 263 U.S. 508.

II.

THE PETITION SHOULD BE DISMISSED BECAUSE THE CIRCUIT COURT OF APPEALS HAD NO JURISDICTION TO DO OTHER THAN IT DID, SINCE THE ORDERS APPEALED FROM ARE INTERLOCUTORY AND NOT FINAL.

There are three orders from which Petitioner took an appeal (Tr. 152). The first of these, i.e., the order of November 29, 1945 (Tr. 144), is quite long but its effect is simple, i.e., to leave a cause of action standing to be tried. The other two orders (Tr. 150 and 151) are short and purely incidental. All of them are clearly interlocutory and not final.

(1) The Order of November 29, 1945.

This order (a) dismisses one part of the amended complaint as against defendant General Motors Sales Corporation, (b) dismisses another part of the amended complaint as against both defendants General Motors Sales Corporation and General Motors Corporation, (c) strikes certain parts from the amended complaint as left standing against defendant General Motors Corporation. The action for patent infringement is still pending and untried against the defendant General Motors Corporation (see answer to the amended complaint as further amended by order dated November 29, 1945)—(Tr. 173). Under the decisions this order is not a final judgment within Sec. 225 of the Judicial Code (28 USCA 225) which provides that "The circuit courts of appeal shall have appellate jurisdiction to review by appeal or writ of error *final* decisions * * *." Appeals cannot be taken piecemeal and to be appealable a judgment must be "final not only as to all the parties but as to the whole

subject-matter and as to all of the causes of action involved." *Collins v. Miller*, 252 U.S. 364, 370. As this Court long ago said in *Bostwick v. Brinkerhoff*, 106 U.S. 3, 4:

> "The rule is well settled and of long standing that a judgment or decree to be final, within the meaning of that term as used in the acts of Congress giving this court jurisdiction on appeals and writs of error, must terminate the litigation between the parties on the merits of the case, so that if there should be an affirmance here, the court below would have nothing to do but to execute the judgment or decree it had already rendered."

A dismissal as to some defendants, leaving the cause of action pending against others, is not such a judgment and is, therefore, not appealable. *Hohorst v. Hamburg-American Packet Co.*, 148 U.S. 262; *Bank of Rondout v. Smith*, 156 U.S. 330; *Bush v. Leach*, 22 F. (2d) 296 (C.C.A. 2); *Menge v. Warriner*, 120 Fed. 816 (C.C.A. 5); *General Electric Co. v. Allis-Chalmers*, 194 Fed. 413 (C.C.A. 3); *Atwater v. North American Coal Corp.*, 111 F. (2d) 125 (C.C.A. 2); *Moss v. Kansas City Life Insurance Co.*, 96 F. (2d) 108 (C.C.A. 8); *Schultz v. Manufacturers & Traders Trust Co.*, 103 F. (2d) 771, 772 (C.C.A. 2)

(2) The Order of December 3, 1945.

The order of December 3, 1945 (Tr. 150) is an order denying Petitioner's application for a default judgment and granting Respondent twenty days within which to answer Petitioner's amended complaint. The time within which defendant had to answer had not begun to run at the time that this order was entered, as up until that time Petitioner had not elected whether he would amend his complaint or stand thereon. In any event, the order

was discretionary, interlocutory and not final. *Luhrig Collieries Co. v. Interstate Coal and Dock Co.*, 287 Fed. 711, 713, (C.C.A. 2); *Mandel Bros. v. Victory Belt Co.*, 15 F. (2d) 610, 611 (C.C.A. 7).

(3) The Order of December 4, 1945.

The order of December 4, 1945 (Td. 151-2) is one entered on the court's own motion, striking certain portions of an affidavit of plaintiff as scandalous. This, like any other order to expunge, is interlocutory and not appealable. *Schultz v. Manufacturers & Traders Trust Co.*, 103 F. (2d) 771 (C.C.A. 2).

The appeal should never have been taken and the circuit court of appeals was correct in dismissing it.

III.

THE PETITION SHOULD BE STRICKEN FOR SCANDAL.

The Petition, under the heading "Summary Statement of Matters Involved", commencing on page 3 and extending through page 39, is replete with gratuitous and unwarranted aspersions upon court and counsel: e.g., the courts (the District Court and Court of Appeals) are charged with "malfeasance" (page 3); certain officers of the court are charged with "unprincipled misfeasance and/or lack of adherence to fidelity"; defendant's counsel and the trial judge are charged with "grossly aggravating-assaults, of unfairness and injustice, of intemperate, scandalous, hot-fanatical, professional and partisan allegations" (p. 3) etc.

On page 5 other defendants, i.e., law firms and individual partners against whom the case was dismissed

and as to whom no appeal has been taken, are gratuitously charged "with malfeasance, moral turpitude, gross negligence and dereliction and breaches of duties, misleading the complainant and other unfairness involving violations of attorneys' oath," followed by long purported quotations from matters not of record extending through page 11.

A petition initiated with scandalous assertions is not one which should appeal to this Court, and should be stricken because of the scandalous matter contained therein. This Court has heretofore disapproved of the procedure followed by petitioner.

In *Green v. Elbert,* 137 U.S. 615, 624, this Court said when striking from the files of this Court the brief of the plaintiff:

> "We regret that we find ourselves compelled to add something further. The printed argument of plaintiff in error contains many allegations wholly aside from the charges made in his complaint, and bearing reproachfully upon the moral character of individuals, which are clearly impertinent and scandalous, and unfit to be submitted to the court. It is our duty to keep our records clean and free from scandal."

This ground alone is justification for the denial of the petition.

CONCLUSION

It is therefore respectfully submitted that the petition for writ of certiorari should be denied.

DRURY W. COOPER,
LOUIS QUARLES,
DAVID A. FOX,
Counsel for Respondent.

FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

No. 378

ROY GRANT, JR.,

DOING BUSINESS AS

NO SLEET WINDSHIELD HEATER COMPANY,

Plaintiff-Appellant,
Petitioner,

vs.

GENERAL MOTORS CORPORATION,

A FOREIGN CORPORATION, ET AL.,

Defendants-Appellees,
Respondents.

PETITION TO RECONSIDER PETITION FOR WRIT OF CERTIORARI.

ROY GRANT, JR.,
Milwaukee, Wisconsin,
Petitioner.

THE GUNTHORP-WARREN PRINTING COMPANY, 210 WEST JACKSON, CHICAGO

SUBJECT INDEX.

AUTHORITIES CITED.

TEXT BOOKS CITED.

By Reference, Re Defendants'
Motion to Dismiss
in Trial Court (Tr. 116 to 125 Incl.)

By Reference, Re Defendants' Motion to Dismiss in Trial Court (Tr. 156 to 168 Incl.)

Authorities:

Rules:

By Reference, Re Defendants'

Motion to Dismiss

on Appeal (Tr. 336 to 341 Incl.)

Authorities:

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

Docket No. 378

ROY GRANT, JR.,
DOING BUSINESS AS
NO SLEET WINDSHIELD HEATER COMPANY,
Plaintiff-Appellant,
Petitioner,

vs.

GENERAL MOTORS CORPORATION,
A FOREIGN CORPORATION, ET AL.,
Defendants-Appellees,
Respondents.

PETITION TO RECONSIDER PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States.

ROY GRANT, JR., petitioner herein, presents herewith his petition for rehearing of the above entitled cause, as provided for by Rule 33 of the Rules of the Supreme Court of the United States. Your petitioner further respectively certifies that the petition for rehearing is presented in good faith and not for delay.

ROY GRANT, JR.,
Petitioner.

May it please the Court:

I.

General Statement of Issues Involved on Motion for Review.

Certain and material verified points or averments and/or several connected matters of verified ultimate fact, including fraud practiced by the corporate defendant, General Motors Corporation, before the United States Patent Office, resulting in the issue of a patent to General Motors Corporation wherein fraud is alleged to be present, this said patent, thus fraudulently obtained by the corporate defendant, General Motors Corporation, resulting in prejudice (on advice of counsel) to plaintiff's property rights, were summarily dismissed by the trial court on defendants' attorneys demurrer or motion to strike the complaint (Tr. 1, 126) or certain parts thereof. In addition, a full separate count (Count 2) (Tr. 138) of plaintiff's several claims for relief was also summarily dismissed by the trial court on defendants' attorneys demurrer or motion to strike.

The said demurrer or motion to strike (Tr. 143) was heard before the trial court on September 10, 1945. It was met with the plaintiff's opposition on file (Tr. 156 to 169). The determination (Rule 78, F. R. C. P.) of the court was not set forth on September 10, 1945, as the court took the matter under advisement. (p. 31, Petition for Writ of Certiorari.)

However, after the hearing, the determination and disposition of the demurrer seemingly was a major operation. The court's formal opinion was rendered, 64 days later, on November 13, 1945 (Tr. 170).

A reading of the trial court's formal opinion (Tr. 170) will clearly and simply show the perverse abuse of discre-

tion to which the plaintiff was subjected to by the trial judge. Further shown is the manifest failure of justice set forth in the trial judge's opinion because of circumvention of the commanding procedural laws of the Federal Rules of Civil Procedure whereby a person's substantive rights mandatorily cannot be destroyed by procedural machinations.

Briefly, on one point, the trial judge's formal opinion dismissed material averments which the F. R. C. P. prescribe as proper matters to be pleaded; full counts were dismissed; and the only right to amend the complaint was restricted to only "one" word although this part of the opinion of the trial judge was not raised on demurrer or motion to strike. Yet, all these verified averments and full counts were admitted on the corporate defendants' attorneys' motion to strike or demurrer.

However, the court in its major operation of said dismissals requiring 64 days for the court's formal opinion, even though fraud was thus admitted on demurrer by defendant, General Motors Corporation, the court refused jurisdiction of the alleged injury to plaintiff by the verified averment of fraud in the complaint. Thus, in this certain verified fraud allegation, the plaintiff is left with his injury, denied equal protection of the laws, by the trial judge, and the defendant corporation, General Motors Corporation, goes scot free and is not required to answer the verified allegation of fraud resulting, at least, in private injury to plaintiff for the reason, counsel sought by plaintiff, did rely with full faith and credit on the official records of the United States Patent Office, and said counsel held the patent, No. 1,694,757, of the General Motors Corporation, allegedly fraudulently obtained and so admitted on the corporate defendants' motion to strike, as a complete response to the Birely Patent, No. 1,630,921, in this suit. In this connection, with no complaint on file and in view of the

Statute of Limitations, the amount of recovery possible was being reduced with each day passed.

In *Niles* v. *Anderson,* 5 How. (Miss.) 366 the court held,—

> "If the bill contains an allegation of fraud, it must be denied by answer, whatever defense may be adopted to other parts of the bill, because fraud gives jurisdiction to the court and lays a foundation for relief. * * *"

Briefly, on other points of the corporate attorneys' motion to strike, or demurrer, the major operation resulting in the trial court's formal opinion, the trial court changed the appearance or classification of each point of the motion to a self sufficient motion within itself. Thus, the rule of law *re* demurrer was expediently circumvented, to the advantage of the corporate defendants, to wit,—

> "Demurrer may be to the whole or a part of the pleading; but if to the whole, and a part be good, the demurrer will be overruled,—
>
> *Pinkum* v. *City of Eau Claire,* 81 Wis. 301, 51 N. W. 550.
>
> *Brown* v. *Duchesne,* 2 Curt. C. C. 97, Fed. Case No. 2,003."

This court's attention is also directed to the concrete fact that the corporate defendants' attorneys did not present a motion or demurrer seeking to have the verified complaint made more specific and certain. No procedural remedy of this nature was sought.

The intent to clearly continue through with additional fraud before the United States District Court, the fraud to be adopted by a United States District Judge, the trial judge, is further in evidence in the record of this action before the trial judge.

The corporate defendants' attorneys, Lines, Spooner and Quarles, fully recognizing the "SNEAK" attack on the veri-

fied complaint, hurried to scuttle the complaint and the plaintiff's substantive rights and quickly served notice and an order, premised, not truthfully or honestly, on the court's sinister formal opinion, but rather, shockingly premised on "Entry Upon the Court's Opinion".

The stealthy significance of the "Entry Upon Order" by the corporate defendants' attorneys is a matter of record (Tr. 176-178).

II.

Order No. 562 Entered by Clerk.

Plaintiff submitted strong opposition (Tr. 201-217, Incl.) to the unrighteous unruly attempt of the corporate defendants' attorneys for "Entry Upon" the court's formal opinion. However validity to plaintiff's answer (Tr. 201-217) to order of the court was not granted by the court, and plaintiff's substantive rights were thus contemptuously brushed aside by "Entry Of" the corporate defendants' attorneys order which did stealthily "Enter Upon" the court's formal opinion. The trial court adopted verbatim the "STEAL" order, parts of **which infringed "Due Process of Law" and "Equal Protection of the Law"** to the prejudice of the plaintiff yet, to the immense, unfair, illegal advantage of the corporate defendants. Thus, the corporate defendants' attorneys order was entered as No. 562 on the records of file in this action by the clerk of the trial court on November 29, 1945 (Tr. 220 to 222).

It would seem beyond question, a careful analysis of the court's opinion (Tr. 170 to 174), the plaintiff's answer to the court (Tr. 201 to 217), and the "Entry Upon" order of the corporate attorneys adopted verbatim by the trial judge (Tr. 220 to 222), fully establishes how well the corporate defendants' attorneys had "cased the job" of defrauding

the plaintiff out of his substantive rights and the aiding and abetting by collusion by the trial judge in yielding, puppet like, to the said corporate attorneys.

III.

Order No. 567 Entered by Clerk.

On December 3, 1945, order No. 567 was entered on the record of this action in the trial court clerk's office. This order appears at Tr. 228, and page 15 of the certified transcript of analogous proceedings appears at Tr. 229. A careful reading of both subjects and a free and unrestricted sound interpretation clearly shows that the true meaning of words expressed by the plaintiff before the court have been irreconcilably interpreted into an interpretation devoid of good faith and common sense as expressed by the order No. 567. The ultimate fact is the said order makes false the records of the United States Court, because the plaintiff, under the circumstances and without a judgment of the court on plaintiff's applications for judgments by default (Tr. 190 to 199, Inc.), did *not* elect before the court or at any other time elect to be foreclosed by the court and thus assert his election to stand on "only" the first amended complaint. In fact, it is clearly understood the trial judge granted a consolidation of the original and amended complaint (Pages 25 and 26, Petition for Writ of Certiorari). No other reasonably honest and sensible interpretation can be placed on the trial judge's assertion, to wit,—

"The Court: All right. Go ahead."

For that reason, again, the said order of the court, No. 567, makes false the records of the United States Courts.

Uneven Handed Justice—No Answer From Corporate Defendants in 205 Days.

And thus, in addition, said order of the court, No. 567, adversely prejudices the plaintiff for the reason the corporate defendants' attorneys have not shown cause, to say nothing of good cause (Rule 55 (c) F. R. C. P.) why the entry of judgments by default should not be entered since 205 days have been interposed between May 12, 1945 the date of filing complaint, and December 3, 1945 the date of hearing plaintiff's applications for judgments by default against the corporate defendants without service of the corporate defendants' answer (Tr. 190 to 199 Incl.).

Super Privilege Anarchy For Corporate Defendants and Corporate Defendants' Attorneys.

With exaggerated callousness for the provisions of "time for answer" as provided for by the Federal Rules of Civil Procedure, Rules 12 and 15, and apparently with intent of making the little fellow a dupe (the plaintiff, a layman) the trial judge in seeming servitude to the corporate defendants and the corporate defendants' attorneys, in effect, arrogantly slammed the door on the plaintiff's applications for judgments by default, and denied due process of full hearing of one of said plaintiff's applications, and denied a hearing, in any sense on the final application for judgment by default against the corporate defendants (p. 36, Petition for Writ of Certiorari).

IV.

Corruption.

Order No. 569 Entered by Clerk.

On December 4, 1945, order No. 569 was entered on the record of this action in the trial court clerk's office. This order appears at Tr. 230. And this order is Corruption with a capital "C" by any sane principle of interpretation in good faith. The order is the product of presumably honest and reputable "brethren" of the law fraternity and officers of the court, *e. g.*, the corporate defendants' attorneys, members of the law firm of Lines, Spooner and Quarles, Attorneys at Law. Yet, irreconcilable to any interpretation rule the excerpt by the otherwise presumedly "pious" attorney Louis Quarles, attorney for the corporate defendants, the said excerpt from the certified transcript of proceedings, page 15, of December 3, 1945 appearing at printed Transcript of Record 229, and the said excerpt again appearing in this plaintiff's petition before this Supreme Court for Writ of Certiorari, at pages 36 and 37, the excerpt read with this said attorney's order No. 569 clearly carries away and voids any other contention except the most bold assertion of valid ultimate fact plainly alleging unconscionable imposition of invented fraud, as supported by the record, cast onto the United States Courts and court records by attorney Louis Quarles, a hired professionalist, and adopted verbatim by the trial judge over his signature.

The record is clear. The words are simple. And the outrageous fraud an imposition on intelligence, **and a violation of the penal statutes of the United States Code.**

The true record in this action vigorously supports the truth of the foregoing alleged fraud, collusion and corrup-

tion designedly projected to maliciously destroy or injure, delay and prejudice the impartial adjudication of this plaintiff's claims for relief.

The irreconcilable statements of Attorney Louis Quarles having fraud for a foundation are,—
excerpts,

Quarles:

"* * * I have underscored certain parts in red."

"I have indicated them in red in the affidavit, copy of it" (Tr. 229).

and excerpts, from Quarles' order, adopted by the trial judge, and entered as Order No. 569 by the court clerk,—

Quarles:

Clause 1, "* * * the same being indicated by the reporter's markings upon said Affidavit of said Roy Grant, Jr., filed in this matter November 29, 1945;

Clause 2, "* * * the matter indicated by the reporter's markings upon said Affidavit * * *" (Tr. 230).

V.

Conclusion and Conspiracy. Corporate Defendants' Attorneys And the Trial Judge Deprive Plaintiff of Civil Rights and Equal Protection of the Laws.

The introductory prefix or condition of plaintiff's prayer in his original complaint (Tr. 19) is, to wit,—

"Wherefore, as the said defendants, General Motors Corporation and General Motors Sales Corporation, *and those controlled by defendants,* * * *." (Emphasis supplied.)

In or at the beginning of the crime to destroy plaintiff's civil rights, the trial judge *rather* than use the power of the United States Courts to prevent any other person, or persons, from depriving this plaintiff citizen of the United States of the equal protection of the laws, the trial judge as evidenced by the judicial determinations of the proceedings of record heard before him, the trial judge seemingly with deep rooted antagonism for the plaintiff's relief and/or with crass repulsive, offensive and disgusting opposition to the prescribed substantive rights of the plaintiff, and with seemingly medieval anarchaic disregard transcending the prescribed Federal Rules of Civil Procedure, **the trial judge did fail to do so prevent other person, or persons, from depriving this plaintiff of the equal protection of the laws.**

At page 15 of the certified transcript of proceedings, dated December 3, 1945, what the trial judge simply understood in connection with certain material verified averments of the complaint in this action, appears from the record precisely, thus,—

> "The Court: You filed a complaint here in which you joined in about a half dozen different attorneys and you claimed they were in conspiracy against you, * * *."

For emphasis now, the attention of this court is again directed to the words of the prefix to the prayer of the complaint set out hereinbefore, *e. g.*,—

> "* * * the said defendants, General Motors Corporation and General Motors Sales Corporation, *and those controlled by defendants,* * * *" (Emphasis supplied.)

Other evidence of the abuse of discretion grossly lacking in sensibility or refinement of the trial judge is in evidence within the trial judge's formal opinion (Tr. 173). Quote,—

> "However, as stated heretofore, the plaintiff is a layman and should not be held to the same fine choice of language that one skilled in the law would use."

Aside from the supple derogatory inference contained therein said quotation with respect for the plaintiff, it is obvious a clear inherent inference is that attorneys (and the trial judge, a lawyer) are estopped from abusing legal proceedings by unconscionable assaults of confusing contradictions of literary words or oral expressions resulting in **standard villainies of "cheating", and "chiseling", and "swindling"** the adverse party, at least, out of his inalienable substantive civil rights. In fact, the United States Code, if not winked at, provides for the protection of civil rights by proper authorities (Chapter 3, Title 8 United States Code).

At page 8, of corporate defendants' attorneys document before this court, entitled "Brief in Opposition to Petition for Writ of Certiorari", and item (d) thereof, is found a subterfuge (a subdivision indicated as (2) is not enclosed within Rule 39 of this court) so unsubstantial in merit that it is clear the corporate defendants' attorneys must grasp any fakery and/or frantic excuse on the supposition **they may escape the consequences of the fraud and collusion of their close working alliance with the trial judge resulting in the denial of civil rights to the plaintiff.**

Yet, the plaintiff does not believe this court can be so easily distracted and diverted from the primary to unsuitable secondary issues. Nevertheless, it seems to be pertinent for this court to consider if the cynical remarks of the corporate defendants' attorneys in connection with a main verb is not analogous, to the popular version, of the rich and the superior powerful who put the dollar sign above justice, and of the "ham acting" of self-professed intellectuals wagging parasitically as self-branded "holier than

thou'' and being neither wired for any such feelings as shame or modesty, **indulge in an arrogant social consciousness tolerating any sense of guilt on the premise their syrupy literary trash would blind out the real issues on appeal but would not reveal deceit as the product of a verbomaniac,** but thus, foreclose execution of the laws and/or foreclose to a person the protection of his civil rights in the United States Courts.

The end result of the bad wicked technique of the corporate attorneys is obviously to judicially as well as economically exploit the plaintiff in this action. However, maintenance of the plaintiff's ''verified'' complaint and maintenance of the subsequent quarrel which has developed since the filing of the complaint is premised not only on the full legal protection of plaintiff's substantive rights but, is also premised on the plaintiff's (a layman's) **full faith and belief in the integrity traditional with the United States Courts.**

Accordingly, the realism of the Statement of Points on Appeal to the Circuit Court of Appeals for the Seventh Circuit (Tr. 283 to 293), which the plaintiff intended to rely on, takes on superior significance under the supervisory authority of the Supreme Court of the United States in connection with, **either singularly or in the conjunctive, the acts of abuse of discretion, fraud, fraud and collusion, and judicial determinations of the lower level United States Courts.**

Plaintiff's Notice of Appeal was duly filed on December 19, 1945 and incorporates verbatim the orders (or parts thereof) entered by the trial court from which the plaintiff appealed (Tr. 232 to 235).

VI.

Complete "Official" Record Designated.

Pursuant to Rule 75 (d), F. R. C. P., plaintiff designated only the "complete" official known record (Tr. 254 to 263).

Plaintiff's Statement of Points appears at Tr. 283 to 293 and therein is set forth twenty-six separate grievances.

Substantially the twenty-six questions presented to this court, pages 41, 42, 43, 44, 45, 46, 47, 48, 49, 50 and 51 of the plaintiff's petition for Writ of Certiorari, contain, for all practical purposes, a restatement of the Statement of Points submitted to the Appellate Court.

On January 25, 1946, the clerk of the district court, *taking upon himself without other authority,* obtained the collusion of the trial judge and an extension of time (10 days now appears in the trial court records, see appendix, *post*) for the purpose of delaying beyond 40 days (Rule 73 (g), F. R. C. P.) the filing of the certified transcript of record on appeal.

Subsequently, it appears that on the 28th day of January, 1946 the clerk of the trial court, finally at his ultimate convenience, certified an appeal record (Tr. 297) under the seal of the United States District Court for the Eastern District of Wisconsin.

A reading of plaintiff's Notice of Appeal (Tr. 231 to 235) is convincing the orders appealed from are set out verbatim and the corporate attorneys, and the trial judge, could not have been misled.

During the interim of Plaintiff's Notice of Appeal and the Certification of Record by the trial court clerk to the Circuit Court of Appeals for the Seventh Circuit, the corporate defendants' attorneys did not desire to docket

the appeal for a preliminary hearing in order to make in the Appellate Court a motion to dismiss (Rule 75 (j), F. R. C. P.). No such motion is of record, or at least it is not known to this plaintiff.

The certified record was examined by the plaintiff in the office of the Clerk of the Appellate Court on January 30, 1946 *after* the record had been transmitted to the Appellate Court. It was plain, clear, and open to the mind that the "certified" record had been falsified and the responsibility for mutilation, substitution and other acts of falsification of the certified record was the failure of the duty of the clerk of the trial court to certify a true record resulting in the actual certification of a false record.

The "certified" record had been transmitted to the Appellate Court and immediately thereafter the said examination by plaintiff on January 30, 1946 an Emergency Petition for Correction of the Record was drafted (Tr. 344-345) in conjunction with an other Emergency Petition to Void, But Not Expunge from the record the corporate attorneys' Motion to Dismiss plaintiff's appeal for want of jurisdiction to this Circuit Court of Appeals for the Seventh Circuit (Tr. 311 to 315).

Rule 75 (h), F. R. C. P., re objections to record and power of court to correct records, gives the Appellate Court as a matter of right the power to hear a petition on the generalization of words e. g., on a proper suggestion and the Appellate Court to direct the correction of the record.

VII.

Purity.
Purity Denied and Destroyed
by
Circuit Court of Appeals
Seventh Circuit.

However the plaintiff's petition to correct the record (Tr. 344-345) was denied by the Appellate Court, (Tr. 358). And, it is held, when convenient by the corporate attorneys, the courts of "truth and honesty" should erect an "iron wall" and deny from expose criminal acts which destroy "purity", in its principal sense, in the court records. Such a fantastic monstrous quack reasoning by the corporate defendants' attorneys should not cause this court to fail in its plain duty, toward the providers of scandel and toward the perpetrators of scandalous felonious conduct resulting in false, fraudulent records of the United States Courts, and thus, with honesty, this court should cause or force the correction of false records of the United States Courts.

Thus, the subject matter of "corruption" in the United States Courts records under seal in this action having been called to the official attention of this court by the issues disclosed in the plaintiff's printed Petition to Correct Diminution of Record submitted to this court, the "corruption" should not be allowed to continue to disabuse the minds of interested parties now, or at any future time at which the United States Court records may be reviewed.

The Code of Laws of the United States does *not* privilege the attorneys of adverse litigants in the falsification of court records and/or does not privilege officers of the United States Courts in the mutilation, substitution and

other acts of falsification of the records of the United States Courts under the certification of the court clerk and under the seal of the United States District Court.

Opposed to the theory as expressed by the Appellate Court, the plaintiff insists Rule 75 (h), F. R. C. P., does not direct or require the deficiencies to be enunciated within the petition, nevertheless, it is shocking, in the interests of truth, morality, and justice to find the Appellate Court supporting, for as long as the fractional part of a fleeting moment, the falsification of the United States Courts' records on the expedient finding "because no deficiency is shown", when the said rule provides the Appellate Court with the power for correction on mere suggestion of falsification of the certified record of the United States Courts.

Scandalous indiscretions and alleged rude improprieties apparent on the face of the record in the proceedings in this action must merit the sincere condemnation of this Supreme Court. It seems under no other conditions, except that your petitioner was an eye-witness and the record is plain, could faith and belief in the "true end" functions of the United States Courts be so rudely and oppressively torn asunder by such gross abuses fraudulently, intentionally, and so recklessly practiced in the United States Courts.

Another set of circumstances. The deliberate smothering by withdrawal on the initiative, without authority, of and by the clerk of the trial court of certain items of pleadings, papers, etc., before the trial court of Plaintiff's Statement of Points, e. g., items numbered 6, 10, 26, and the substitution for the original paper item 29 supplied by the plaintiff, under seal, to the clerk for the record on appeal and for the certification thereof, and item 30 on which original "true" copy on file in the District Court can be found the unauthorized substitution in the handwriting of the clerk of the trial court, and thus the

forgery thereof said paper, by the striking through obliteration of the printed words Order of Entry to the handwritten words in ink e. g., Entry of Order. This brief of plaintiff herein referred to is at, Tr. 180 to 186 Inclusive, as is in opposition to corporate defendants' attorneys "Notice" re " * * * defendants will present to the court in the above matter an order in the form attached *for entry upon the court's opinion* * * *" appearing at Tr. 175. (Emphasis Supplied.)

The substantive offense in this action of the obstruction of due administration of justice is the obvious endeavor of the trial judge, the clerk of the court, and the corporate defendants' attorneys to impede or obstruct the due administration of justice (U. S. Criminal Code, section 135).

The record is clear and reasonable men could only think **the United States District Court in this action was composed of those who are the defendants.** This degree of corruption or depravity is not analogous to the otherwise held belief of American citizens in the integrity of their Federal Courts.

VIII.

Purity?
Corporate Defendants' Attorneys
Louis Quarles, David A. Fox
Lines, Spooner & Quarles
Corrupt Influence
vs.
Canons of Ethics
and
Facts of Record.

Briefly, several distinct "Canon of Professional Ethics" are set forth as an introduction to the main subject.

On the immediately recognized authority of the Wisconsin State Supreme Court, in the case of *Hepp* v. *Petrie*, 185 Wis. 350 the Supreme Court held,

> "Such authority as these canons have is derived not from the fact that they are approved by the American Bar Association *but because they are statements of principles and rules accepted and acknowledged by reputable attorneys* wherever the common law of England obtains and are recognized and applied by the courts in proper cases."

Canon of Ethics.

1. "Canon 15. How Far a Lawyer May Go in Supporting a Client's Cause

> *Nothing operates more certainly to create or to foster popular prejudice* against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties *than does the false claim, often set up by the unscrupulous* in defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause."

2. "Canon 22. Candor and Fairness

Excerpt,

> *It is unprofessional and dishonorable* to deal other than candidly with the facts, * * * *in drawing* affidavits and *other documents, and in the presentation of causes.*
>
> "A lawyer should not * * * address to the judge arguments upon any point not properly calling for determination by him."
>
> *"These and all kindred practices are unprofessional and unworthy of an officer of the law charged,* as is the lawyer, *with the duty* of aiding in the administration of justice."

3. "Canon 28. Stirring Up Litigation, Directly. • • • Excerpt,—

> *It is disreputable to hunt up defects in* titles or other *causes of action and inform thereof in order to be employed to* bring suit or *collect judgment, or to breed litigation.* • • • *A duty to the public and the profession devolves upon every member of the Bar, having knowledge of such practices upon the part of any practitioner, immediately to inform thereof to the end that the offender may be disbarred.*"

4. "Canon 29. Upholding the Honor of the Profession. Excerpt,—

> *Lawyers should expose* without fear or favor before the proper tribunals *corrupt or dishonest conduct in the profession.* • • •"

Plaintiff inserts here the questions, *e. g.*,—

1. Is Judge Duffy a lawyer; Are the Judges of the Circuit Court of Appeals for the Seventh Circuit lawyers; Are the honorable Justices of the Supreme Court of the United States qualified and renowned lawyers?

2. The duty of lawyers is plain, or do lawyers uphold certain other lawyers in corrupt and dishonest conduct and thus, maintain the degradation of the dignity of the profession and a depravity not only to the law but also to the administration of justice.

5. "Canon 30. Justifiable and Unjustifiable Litigation.

> *The lawyer must decline* to conduct a civil cause or *to make a defense* when convinced that it is *intended merely to harass or to injure the opposite party or to work oppression or wrong.*" • • •
>
> "*His appearance* in court should be *deemed the equivalent to an assertion on his honor* that in his opinion his client's case is one proper for judicial determination."

6. "Canon 32. The Lawyer's Duty in the Last Analysis. Excerpt,—

> *No client,* corporate or individual, *however powerful,* nor any cause, civil or political, however important, *is entitled to receive, nor should any lawyer render, any service or advice involving disloyalty to the law whose ministers we are,* * * *, or corruption of any person * * * *exercising, a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation.*"

7. "Canon 41. Discovery of Imposition and Deception. Excerpt,—

> When a lawyer discovers that some fraud or deception has been practiced, which has unjustly imposed upon the court or a party, he should endeavor to rectify it; * * *"

Annot. Fraud and deception of court as grounds for disbarment, see attorney and client, Dec. Dig., Key 40-42.

8. "Canon 45. Specialists. Excerpt,—

> The canons of the American Bar Association apply to all branches of the legal profession; * * *" (All emphasis supplied *ante.*)

9. The Wisconsin Statute 256.29, attorneys regulated, provides in parts thereof,—

Section (1). *Attorney's Oath.*

> "I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;"

Section (3). *Void Contract, Legal Effect.*

> Any contract of employment obtained and made in violation of this section shall be absolutely void as to the attorney; but the client may recover any

compensation paid thereunder to or for or received by the attorney on account of such employment.

The attorney shall not be allowed to prosecute or defend the action or proceeding contemplated by such employment."

Excerpt from
Trial Court's Formal Opinion.

An excerpt from the trial court's formal opinion (Tr. 170-174) is also pertinent as an authority with respect to the duty by those whose duty it is to administer the law. Excerpt,—at printed transcript 173,—

"However, as stated heretofore, the plaintiff is a layman and should not be held to the same *fine choice of language that one skilled in the law would use.*" (Emphasis supplied.)

Corporate Defendants' Attorneys',
Louis Quarles, David A. Fox
Lines, Spooner & Quarles
Frantic Excuses
Working Both Sides of Street
In Opposite Directions.

Briefly, let's look at record for a few guiding posts.

Here Are the Facts.

A segment of the certified transcript of Proceedings, dated September 10, 1945 appears at pages 18 to 31 inclusive, of plaintiff's petition for Writ of Certiorari in this Supreme Court of the United States. A reading of the segment referred to clearly shows the propositions pleaded to the trial court and presumably what was known by the court and the corporate defendants' attorneys of record in this action.

Several excerpts,—from the fine choice of language one (corporate defendants' counsel, and the trial judge) skilled in the law would use, as appearing in the said certified

transcript and reproduced within the pages 18 to 31, inclusive, of plaintiff's said Petition of Certiorari, are to wit,—

Mr. Fox: There are four separate grounds to the motion.

(Grant's contention: Not four separate motions.)

The Court: Well, as I recall—I haven't read it completely—when you had a number of these patent attorneys he claimed he owns the patent and that General Motors has infringed on it.

Mr. Fox: That is correct.

(Grant's contention: Yet, court denied applications for judgment by default although General Motors answer was not served by mailing until December 15, 1945. Complaint was filed May 12, 1945.)

The Court: Well, certainly, the cause of action can properly be brought in this District to say "I am an owner of the patent and you violated it."

Mr. Fox: We recognize that. *There is a cause of action pleaded for a patent infringement against General Motors Corporation, and that is not attacked in this motion.* (Emphasis supplied.)

Mr. Fox: *The Complaint is in two counts. The first count* asserts a right to recovery for patent infringement, * * *

* * * there is a Prayer for relief for infringement against General Motors Sales Corporation.

Now, the third point of the motion deals with *the second count* of the Complaint which asks the damages for alleged injury caused to the plaintiff by violations of the Sherman and Clayton Acts. * * *

The only allegations of *Count 2* concerning plaintiff's alleged damage are excerpts that I would like to read.

It alleges:

> 'That, *plaintiff* subsequent to manufacturing and vending articles of said Letters Patent *was subject to great loss caused by violation of the defendants General Motors Corporation and General Motors Sales Corporation* of the Antitrust Laws and Clayton Act. * * *' (Emphasis supplied.)

Then, there is another excerpt that deals with the topic:

> 'That said violations of said acts of Congress by said defendants General Motors Corporation and General Motors Sales Corporation, and violations of the Antitrust Laws of the Wisconsin Statutes, Chapter 133, by defendants caused plaintiff to be deprived of his legal rights to continue, profitable, the promotion of his business, which business originally grew rapidly under the said Birely Patent Rights assigned to plaintiff, and thereby defendants, General Motors Corporation and General Motors Sales Corporation substantially destroyed plaintiff's business and caused great loss and damage to the plaintiff.'

The Court: Liberally construing the Complaint, isn't that a sufficient allegation?

Mr. Fox: That is true, your honor, under Count 1 of his Complaint. * * *

Now, *the Complaint is in two parts,* two separate counts; *the infringement count,* and *then this second count where he is attempting to recover damages because of alleged violations of the Sherman and Clayton Act.*

The Court: The Anti-Trust Act, I see. All right.

Mr. Fox: The other additional paragraphs requested to be stricken, for reasons of technical defects in pleading are, Paragraphs 4, 6, 10, 11, 12 and 13 of Count 1.

Conclusive Evidence
Interpretation.

What construction the corporate defendants, their attorneys, and the trial judge put on the complaint is plain. Their views are not doubtful.

Restated briefly, in good faith, common sense, and with legitimate meaning, the complaint was recognized by the corporate defendants' attorneys and the trial judge as a complaint in two counts by giving natural significance to

their words, and thus, the meaning and intent of the plaintiff adopted by them, to wit,—

Count 1. Asserts a right to recovery for patent infringement.

Count 2. Asks the damages for alleged injury caused to the plaintiff by violation of the Sherman and Clayton Acts by the defendants General Motors Corporation and General Motors Sales Corporation.

Re Count 1. Paragraphs 4, 6, 10, 11, 12, 13 of *Count 1* were requested to be stricken for reasons of technical defects in pleading.

Re Count 1 and Count 2. And if justice has, as a premise good faith, then, the corporate attorneys are concluded beyond controversy, from asserting other than, quoting corporate attorney Mr. Fox,—

> **"All of this material, specific material, is not an effort on our part to put the complaint in such shape that it doesn't state what he has already stated as a real cause of action."**

Thus spread on the record in the trial court is the conclusive evidence of the knowledge of the adverse attorneys and the trial court in connection *with two counts.*

Purity?
Of Trial Judge's Formal Opinion.

The trial judge's endeavor to alter, impede, and obstruct the due administration of justice in this action known to all interested parties as pending is clearly in evidence premised on the trial judge's formal opinion (Tr. 170-174), first exhibited officially 64 days after hearing of motion to strike, and influencing by deception the utter corrupt destruction of certain of plaintiff's civil rights by circumvention of the Federal Rules of Civil Procedure and long established principles of law.

Several authorities are referred to,—

1. Incorporated herein by reference and made applicable hereto are the citations of authorities in plaintiff's opposition and memorandum (Tr. 116 to 125, 156 to 168) before the trial court on hearing of corporate defendants' attorneys' demurrer or motion to strike.

2. Judge Lyon held, in *Leidersdorf, et al.* v. *Flint*, 50 Wis. 401, Price and Steuart, 427:

> "From an examination of some of the cases we are led to believe that the usual practice is to reserve the question of infringement until the coming in of the proofs. In cases of any doubt this seems to be the better and safer practice; for the evidence will undoubtedly throw more or less light on the question. We have concluded to adopt that course in this case. Hence, without intimating any opinion as to whether the facsimiles of defendant's trade-marks, considered alone, are or are not infringements of plaintiff's trade-mark, we hold, for the purposes of the demurrer, that the complaint states a cause of action * * *."

* The plaintiff does not contend the facts are the same, but the sentence may be well taken by analogy in the disposition of a motion to strike or demurrer.

3. Rule 8 (e) (1), F. R. C. P., e. g., "No *technical* form of pleadings or motions are required."

Rule 8 (f), F. R. C. P., Construction of Pleadings.

> "All pleadings shall be so construed as to do substantial justice."

4. Montgomery's Manual of Federal Jurisdiction and Procedure, Fourth Edition, 1942, Section 326, says concisely:

> "If a bill, in and by its own averments, states a prima facie case, **that case cannot be properly overthrown** by the chancellor merely on grounds that he judicially knows of facts that would support an answer. * * * This is so because, if such facts exist, **the complainant is entitled to a hearing where he can present and argue the facts, and such a hearing cannot be had on a demurrer to the bill.**"

5. Walker on Patents, 1937, Deller's Edition, Vol. III, Section 693, says concisely:

"A demurrer may be interposed by the defendant to test the sufficiency of the complaint in an action at law, but a general demurrer will not be sustained where there is enough in the complaint to make out a cause of action. (*Ewart Mfg. Co.* v. *Baldwin Cycle Chain Co.*, 91 Fed. 262.)

Purity† of
Trial Judge's Formal Opinion.
To Defraud the Plaintiff.

The formal opinion of the trial judge appears at printed Transcript 170-174. The significance of the word "formal" is not clearly understood. However, at page 2 of the certified transcript of proceedings of November 26, 1945 on file in this Supreme Court, the trial judge is recorded as having said, "I rendered a formal written opinion of some five pages in length on the 13th of November." It is to be understood the plaintiff does not adopt the word "formal" except for the weight of the "formal opinion" as evidence of the unrestrained interlocking passionate participation of the trial judge with the corporate defendants' attorneys, Louis Quarles and David A. Fox, in their immoral endeavor to impede and obstruct the due administration of justice in this action pending before the court.

The "formal opinion" required 64 days for its formation after hearing of motions to dismiss or to strike. Due form is obviously lacking for the reason the decision of the trial judge does not prescribe what principles of law under the Federal Rules of Civil Procedure grant jurisdiction to **the trial judge to defraud the plaintiff**, on defendants' motion to dismiss or to strike, of—

(a) two full counts against one corporate defendant,

(b) one full count against other corporate defendants, and

(c) the current procedural law which transcends the directives of section 3, pleadings and motions of the F. R. C. P., for the purpose of accomplishing the result, of striking or dismissing, and thus defrauding the plaintiff out of his, verified averments within a complaint on the defendants' attorneys plea of technical defects in pleading.

Substantive Rights Lost
by
Defrauding Procedural Obstructions.

The plaintiff insists he has been defrauded by the trial judge, F. Ryan Duffy, judge of the United States District Court for the Eastern District of Wisconsin in the trial judge's formal opinion (Tr. 170-174) dated the 13th day of November, A. D. 1945.

This opinion, fraudulently denies to this plaintiff the right of trial where he can fully present and argue the ultimate facts set forth in the plaintiff's verified complaint, for due legal protection of plaintiff's substantive rights.

This opinion is nothing short of actual or positive fraud employed to intentionally impede and obstruct the due administration of justice by the cunning deception embodied within the trial judge's opinion to circumvent, the prescribed Federal Rules of Civil Procedure, and, to cheat and/or deceive this plaintiff of the due administration of justice.

The undue influence of the trial judge in connection with the severity and injustice of the said opinion, and, **with oppression of the plaintiff by the excessive abuse of discretion**, the trial judge has placed intolerable restraint on the plaintiff in the preparation of his case for trial because of the confusion hence existing and the large amount of distraction due to the necessity of preparing for appeal and/or on Petition of Writ of Certiorari, all of

which, has impeded and obstructed the due administration of justice in this pending action.

Purity?
Pure "Stealing" in
"Entry of" Order
for
"Entry Upon" the Court's Opinion.

Within 6 days after the date of the trial judge's formal opinion the corporate defendants' attorneys served by mailing on November 19, 1945 a notice with a proposed order attached (Tr. 175-178), for entry upon the court's opinion, to be heard on November 26, 1945.

The fact is the corporate defendants' attorneys proposed "Entry Upon" order does seek "entry" (an act essential to burglary) "upon" (hostile to authority) the trial judge's opinion in a form and order which is not analogous to the court's formal opinion. An inspection will show the lack of purity in item IV (Tr. 177) and in item VI (Tr. 178) of the proposed "Entry Upon" order when read with the trial judge's formal opinion (Tr. 170-174).

The plaintiff's opposition to the hearing of said notice appears at Tr. 180-186.

Plaintiff's opposition to the "Entry Of" the "Entry Upon" order appears in affidavit form, an answer to order of court (Tr. 201-217).

The last two paragraphs of plaintiff's said opposition, concisely, indicating **lack of Due Process of Law** and **Equal Protection of the laws** are,—

> "Further, plaintiff hesitatingly says he does not know if it is ungentlemanly to denounce those who admit fraud, and all the other sordid charges defendants have admitted.
>
> On this subject, maybe the plaintiff is not sure, but

plaintiff does believe, that any attempt by strong financial interests and their attorneys, **especially where said strong financial interests are defendants and have admitted fraud, etc., on a person,** should be brought up shortly and decisively by the court for criminal contempt when also, attempting, with arrogance backed by tremendous financial resources, **to have a judge of the United States Courts become a 'wet nurse' to defendants' alleged fakery, infringement, violations of the U. S. Criminal Code and Anti-Trust and Clayton Acts, and attempt to draw said judge in as an 'accessory after the fact'** and give his stamp of approval, to issues not heard and time for answer which are not within his opinion **and which will destroy plaintiff's rights, under the theory of Equal Protection of the Laws and Due Process of the Law.''**

Special significance of items IV and VI hereinbefore referred to, is in clear evidence, as a proximate cause of defrauding plaintiff of his procedural rights under the F. R. C. P. on the premise the ''Entry Of'' order for ''Entry Upon'' the court's opinion was not signed until adopted verbatim by the trial judge on November 29, 1945, at 3 P. M. (Tr. 222), and, as of November 26, 1945 the plaintiff had on file, and had duly served, plaintiff's Applications for Judgments by Default (Tr. 189-199 Incl.).

The facts, time factors, were set out and were supported by affidavit form, and were concerned with certain periods of time, hence the filing of the complaint on May 12, 1945 to which complaint the corporate defendants failed to present either answer or other defenses and objections pursuant to Rule 12, F. R. C. P.,—to wit,—

1. Default of 199 days;
2. Default of 205 days;
3. Default of 73 days;
4. Default of 35 days;
5. Default of 126 days and/or 133 days.

(Tr. 189-199 Incl.)

Purity?
Of Fraud in
Court Order, December 3, 1945.

This order has hereinbefore been referred to as an endeavor to alter the plaintiff rights by deception touching circumvention.

On the ground the said order,—

(a) denies a provisional remedy,

(b) **projects a fraud into the records of the United States Courts,—**

the plaintiff insists an appeal is a matter of absolute right. The fraud tends to operate against the plaintiff and for the corporate defendants.

Purity?
On Appeal.

The plaintiff-appellant's Emergency Petition and Brief to void the Appellees' Attorneys' Motion and Brief to Dismiss is a matter of record (Tr. 311-342).

The propositions of law plaintiff-appellant relied on to sustain the appeal is a matter of record (Tr. 336-341).

The citation of a Seventh Circuit authority by the appellant in connection with final orders on appeal in the Seventh Circuit, *Karl Kiefer Mach. Co.* v. *U. S. Bottlers Machinery Co.*, C. C. A. Ill. 1939, 108 F. 2d 469, reversed on other grounds 113 F. 2d 356, did not cause the Seventh Circuit Appellate Court to give validity to a previous ruling made in the Seventh Circuit Appellate Court. Rather, the Appellate Court adopted a rule of construction and seemingly justified the rule solely because it did enable the court to drop below and degrade their prior ruling herein set forth.

With no intention of disrespect or unkindness to the Honorable Judges of the Appellate Court it does not seem appropriate for that court to be a "wheelhorse" for the

improprieties hereinbefore set forth in connection with the trial judge and the corporate defendants' attorneys, particularly as the expediency, adopted by the Appellate Court, impedes and obstructs the due administration of justice in this pending action.

It seems well settled the reviewing court is authorized and commanded to look to the entire record before it, *Buessel* v. *United States,* (2 Cir. 1919) 258 F. 811, 820, 170 C. C. A. 105. On this premise, in the record at Tr. 339-340 appears the authorities, *e g.,*

> Order sustaining demurrer to and striking out pleading or dismissing cause of action is ordinarily appealable. *City of Waco* v. *United States Fidelity & Guaranty Co.,* (C. C. A. Tex. 1934), 67 F. (2d) 785, reversed on other grounds 55 S. Ct. 6, 293 U. S. 140, 79 L. Ed. 244.
>
> A judgment dismissing a count on ground that it failed to state a claim on which relief could be granted was appealable as a "final judgment". *Modin* v. *Matson Nav. Co.,* C. C. A. Cal. 1942, 128 F. 2d 194.
>
> An order dismissing complainant's second cause of action for unfair competition because of lack of jurisdiction and because of failure to state facts sufficient to constitute a cause of action was an "appealable order". *Musher Foundation* v. *Alba Trading Co.,* C. C. A. N. Y., 1942, 127 F. 2d 9, certiorari denied 63 S. Ct. 33, 317 U. S. 641, 87 L. Ed. 517.

An honest review of the record on appeal would precisely indicate the trial judge, in effect, had **fraudulently** refused to try the case set out in the verified complaint and to which neither, the trial judge nor the corporate defendants' attorneys had not been deceived.

Purity?
Dismissed in Appellate Court.

The Appellate Court dismissed the appeal for the reason the orders appealed from are interlocutory and not final (Tr. 382).

The substantive right as set forth by the verified complaint, by order of the Appellate Court, **did go unrecognized contrary to the prescribed principles of American Justice.**

Montgomery Manual of Federal Jurisdiction and Procedure, Fourth Edition, 1942, Section 1404, re Final Decisions, says concisely:

> "While the general rule requires that a judgment of a federal court shall be final and complete before it may be reviewed by appeal, it is well settled that an adjudication, final in its nature as to a matter distinct from the general subject of the litigation and affecting only the parties to the particular controversy, may be reviewed without awaiting the determination of the general litigation. Conversely, an adjudication final in its nature as to the general subject of the litigation may be reviewed without awaiting the determination of a separate matter affecting only the parties to such particular controversy."

Walker on Patents, 1937, Deller's Edition, Vol. III, Section 622, says concisely:

> "A final decree will be entered in favor of the defendant, if a motion to dismiss is granted, * * *."

IX.

In the Supreme Court of the United States.

Plaintiff respectfully insists he has presented the record, under great difficulties Tr. 418 (p. 250), Tr. 435, and the record is clear,

1. There is a conflict of decisions in the Appellate Courts in connection with the meaning of "final orders".
2. That the lower level courts have departed from the accepted course of judicial proceedings as to require the supervisory power of this Supreme Court to afford relief to the plaintiff thus injured.
3. Any default in the printing of the record in the customary official manner is attributable solely to official delinquency.
4. The twenty-six questions presented on Petition for Writ of Certiorari appears at pages 41 to 51.
5. The reasons relied on for allowance of writ appear at pages 51 to 54. The reasons number eleven.

For an added contention your petitioner respectfully shows to this court, now, in the court action, *e. g.*, *American Bell Tel. Co.* v. *People's Tel Co.*, C. C. N. Y. (1884) 22 F. 309, decree affirmed (1887) 126 U. S. 1, 8 S. Ct. 778, 31 L. Ed. 863; the court held,

Falsus in Uno, Falsus in Omnibus.

"False in one thing, false in everything."

"When a witness falsifies a fact in respect to which he cannot be presumed liable to mistake, the courts are bound, upon principles of law, morality, and justice, to apply the maxim, *falsus in uno, falsus in omnibus.*"

This long established principle is duly applicable to the denials of record by the United States Federal Courts in this action of plaintiff's substantive rights, all of which impedes, obstructs the due administration of justice and is violently oppressive to your petitioner.

Fraud is an absolute ground for the right to appeal. *Certainly, any other decision would be harsh.* There is no justification for fraud in American Jurisprudence.

Conclusion.

Wherefore, your petitioner, Roy Grant, Jr., respectively prays that the Writ of Certiorari be granted.

I have the honor to remain,

Respectfully yours,

ROY GRANT, JR.,
Petitioner.

ROY GRANT, JR.,
P. O. Box 1695,
Milwaukee 1, Wisconsin.

APPENDIX.

IN THE

District Court of the United States

FOR THE EASTERN DISTRICT OF WISCONSIN.

ROY GRANT, JR., doing business as No Sleet Windshield Heater Company,
Plaintiff,
vs.
GENERAL MOTORS CORPORATION, a corporation, and GENERAL MOTORS SALES CORPORATION, a dissolved corporation,
Defendants.

ORDER.

It appearing to the Court that plaintiff, appellant, is unable to file his Statement of Points that he intends to rely upon in the appeal within the forty days after filing the Notice of Appeal.

IT IS ORDERED that the time for filing Record on Appeal and docketing the action herein in the Circuit Court of

Appeals for the Seventh Circuit be, and that same is hereby extending ten days to and including February 6, 1946.

Dated this 25th day of January, 1946.

(Printed) F. RYAN DUFFY,

(SEAL OF DISTRICT COURT) *U. S. District Judge.*

Attested True Copy:

/s/ B. H. WESTFAHL,

Clerk.

Endorsed: "Filed Jan. 25, 1946. (Printed) B. H. Westfahl, Clerk."